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Policing and Prosecuting Sexual Assault in Los Angeles City and County: A  
Collaborative Study in Partnership with the Los Angeles Police Department, the  
Los Angeles County Sheriff's Department, and the Los Angeles County District  
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## **Policing and Prosecuting Sexual Assault in Los Angeles City and County: Executive Summary**

We use quantitative data on the outcomes of sexual assaults reported to the LAPD and the LASD, detailed quantitative and qualitative data from case files for a sample of cases reported to the two agencies, and interviews with detectives and with deputy district attorneys to pursue five objectives: 1) to document the extent of case attrition and to identify the stages of the criminal justice process where attrition is most likely to occur; 2) to identify the case complexities and evidentiary factors that affect the likelihood of attrition in sexual assault cases; 3) to identify the predictors of case outcomes in sexual assault cases; 4) to provide a comprehensive analysis of the factors that lead police to unfound the charges in sexual assault cases; and 5) to identify the situations in which sexual assault cases are being cleared by exceptional means. We also identify the themes that emerged from our interviews with officials in each agency and with sexual assault survivors.

### **FINDINGS: A SUMMARY**

#### **Patterns of Case Attrition: 2005 to 2009**

- There were 5,031 rapes and attempted rapes reported to the LAPD from 2005 through 2009. Of these cases, 45.7% were cleared either by arrest (12.2%) or by exceptional means (33.5%)<sup>1</sup>, 43.4% were open cases in which the investigation was still continuing,

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<sup>1</sup> According to the Uniform Crime Reporting Handbook (Federal Bureau of Investigation, 2004), offenses are cleared either by arrest or by exceptional means. The handbook states that “an offense is cleared by arrest, or solved for crime reporting purposes, when at least one person is (1) arrested, (2) charged with the commission of the offense, and (3) turned over to the court for prosecution (whether following arrest, court summons, or police notice)” (p. 79). Regarding exceptional clearances, the handbook notes that there may be occasions where law enforcement has conducted an investigation, exhausted all leads, and identified a suspect *but is nonetheless unable to clear an offense by arrest*. In this situation, the agency can clear the offense by exceptional means, *provided that* each of the following questions can be answered in the affirmative (pp. 80-81):

- Has the investigation definitely established the identity of the offender?
- Is the exact location of the offender known so that the subject could be taken into custody now?
- Is there enough information to support an arrest, charge, and turning over to the court for prosecution?
- Is there some reason outside law enforcement control that precludes arresting, charging, and prosecuting the offender?

and 10.9% were unfounded.<sup>2</sup> The LADA filed charges in 82.2% of the 591 cases that resulted in the arrest of at least one suspect and the conviction rate for cases in which charges were filed was 80.2%. Of the 390 defendants who were convicted, 59.2% were sentenced to prison, 37.0% were given probation, and 3.8% received a jail sentence. There were 2,269 rapes and attempted rapes reported to the LASD from 2005 through 2009. Of these cases, 88.3% were cleared either by arrest (33.9%) or by exceptional means (54.4%), 10.6% were open cases in which the investigation was still continuing, and 1.1% were unfounded. The LADA filed charges in 66.0% of the 614 cases that resulted in the arrest of at least one suspect and the conviction rate for cases in which charges were filed was 78.1%. Of the 317 defendants who were convicted, 57.0% were sentenced to prison, 35.3% were given probation, and 7.6% received a jail sentence.

- A substantial number of cases reported to the two law enforcement agencies are excluded from the UCR Part I offense of “forcible rape.” Instead, they are included as Part II “other sex offenses.” From 2005 to 2009, the LAPD received 1,061 reports of oral copulation, penetration with an object and sodomy; the LASD received 630 reports of these three crimes. Including these “other sex offenses” in the forcible rape category would have increased the number of reports of forcible rape by 21 percent for the LAPD and by 27 percent for the LASD. Stated another way, 17.4% of the reports received by the LAPD and 21.7% of the reports received by the LASD during these five years were reports of oral copulation, penetration with a foreign object, and sodomy.

### **Case Outcomes and Characteristics**

- The typical victim in the rape and attempted rape cases from 2008 was a Latina in her mid-20s. Substantial numbers of victims reported that they were drinking or drunk at the time of the incident, but the number reporting use of illegal drugs was low. Most victims were not engaged in any type of risky behavior at the time of the incident and the number of victims with documented mental health issues noted in the case file was low. Nearly half of the victims suffered some type of collateral injury during the assault and stated that they resisted the suspect both verbally and physically. Most victims did not report the crime within one hour. Very few victims recanted their allegations and only about 1 in every 10 indicated that they did not want the suspect arrested.

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<sup>2</sup> FBI guidelines on clearing cases for Uniform Crime Reporting purposes state that a case can be unfounded only if it is “determined through investigation to be false or baseless” (UCR Handbook, 2004: 77). The Handbook also stresses that police are not to unfound a case simply because the complainant refused to prosecute or they are unable to make an arrest. Similarly, the IACP (2005) policy on investigating sexual assault cases states that “the determination that a report of sexual assault is false can be made only if the evidence establishes that no crime was committed or attempted” and that “this determination can be made only after a thorough investigation” (p. 12). Both sources, in other words, emphasize that the police must conduct an investigation and that their investigation must lead them to a conclusion that a crime did not occur.

- Most of the suspects in these cases were not affiliated with a gang and most did not drug their victims prior to the alleged assault. Nearly two-thirds of the suspects in the LAPD cases and half of the suspects in the LASD cases physically, as well as sexually, assaulted the victims during the incident that generated the police report. Most of the suspects subdued their victims using bodily force only, but more than one fourth of the suspects in the LAPD cases used a gun, knife or some other type of weapon to subdue the victim. In contrast, only 11.5 percent of the cases reported to the LASD were cases in which suspects used weapons. Of the suspects who gave a statement to the law enforcement agency, the most common defense was that the sexual contact with the victim was consensual, followed by an assertion that the incident was fabricated by the complainant. Very few suspects claimed that they had been incorrectly identified and only 10.7% of the LAPD suspects and 19.0% of the LASD suspects confessed to the crime for which they were under investigation.
- The majority of the cases reported to each law enforcement agency involved nonstrangers. This was particularly true for cases reported to the LASD, where more than three-fourths of all cases involved victims and suspects who were nonstrangers or intimate partners; in contrast, 41.0% of the cases reported to the LAPD were cases involving strangers.
- Between 40 and 50 percent of these cases were cases with at least one witness and in which some type of physical evidence was recovered from the scene of the crime or from the victim or suspect. If there was a witness, the witness was much more likely to corroborate the victim's testimony than that of the suspect. In about half of the cases the victim underwent a SART exam.

### **Unfounding Sexual Assault**

- There were 81 cases unfounded by the LAPD in 2008. The research team categorized 55 of the unfounded cases as false reports, either because the complainant recanted and there was evidence that a crime did not occur or because there was evidence that the crime did not occur or no evidence that the crime did occur, even though the complainant did not recant. Five cases were categorized as baseless, but not false. Only 10 cases were deemed not to be false reports; 8 of these were cases in which the complainant recanted but there was evidence that her recantation was motivated by fear, pressure or a lack of interest in moving forward with the case, and only two were cases in which the complainant did not recant and there was evidence that a crime did occur. The remaining 11 cases were ambiguous cases that the research team felt should have been investigated further before being cleared.
- Recantation of the complainant is not required to unfound the cases. Of the 81 cases that were unfounded, only 45 were cases in which the complainant recanted her allegations.



More than three-quarters of the false reports involved allegations of aggravated rape. This suggests that complainants who file false reports believe that their accounts will be viewed as more credible if they conform to the stereotype of a “real rape.”

- Complainants’ motivations for filing false reports, which fell into five overlapping categories, included a desire to avoid trouble or a need for an alibi for consensual sex with someone other than a current partner, a desire to retaliate against a current or former partner, a need for attention or sympathy, and guilt or remorse as a result of consensual sexual activity. Many complainants in the unfounded cases also had mental health issues that made it difficult for them to separate fact from fantasy.

### **Overuse of the Exceptional Clearance**

- Cases cleared by exceptional means accounted for more than half of all case clearances for the LASD and for a third of all case clearances for the LAPD. As a result of the overuse of the exceptional clearance, UCR data on “cases cleared by arrest” (which combines cases cleared by arrest and cases cleared by exceptional means) are misleading. The proportion of 2005-2009 rape and attempted cases that were cleared by arrest for UCR reporting purposes was 88.7% for the LASD and 45.7% for the LAPD. However, the true arrest rates (i.e., the percentage of cases that were cleared by the arrest of a suspect) were only 34.7% (LASD) and (12.2% (LAPD). Combining the two types of case clearances substantially inflates the rates of “cases cleared by arrest” for each agency.
- Each agency’s case clearance data is further compromised by the fact that cases that result in the arrest of a suspect are cleared by exceptional means when the district attorney declines to file charges.

### **Correlates of Case Outcomes**

- Our analysis of the LAPD’s decision to unfound the report revealed that the likelihood of unbounding is affected by victim characteristics and by factors that can corroborate the victim’s allegations of sexual assault. The most powerful predictor of unbounding is whether the victim recanted her allegations. Even after taking whether the victim recanted into account, however, we still found that the victim’s relationship with the suspect, the victim’s character/reputation, and whether the victim had some type of mental health issue affected the odds that the report would be unfounded. Moreover, the relationship between the victim and the suspect influenced both the likelihood that the victim would recant and the likelihood that the case would be unfounded.
- We found that law enforcement is more likely to make an arrest if the sexual assault was committed by someone known to the victim, but this largely reflects the fact that cases involving nonstrangers are more likely to have an identified suspect. Our results also

provide some evidence in support of arguments that arrest is more likely if the rape is an aggravated rape in which the suspect used a weapon or the victim suffered collateral injury. However, we find no evidence that arrest is affected by legally irrelevant characteristics of the victim. The strongest predictors of the likelihood of arrest were variables related to the strength of evidence in the case.

- Our analysis revealed that the victim/suspect relationship did not have a significant effect on the prosecutor's decision to file charges or not, either during the pre-arrest charge evaluation or the charge evaluation that followed an arrest. The analysis also revealed that different variables affected the two types of charging decisions. For example, three victim characteristics affected the likelihood of charging during the pre-arrest charge evaluation, but only one victim factor had a significant effect on charging during the post-arrest charge evaluation. Whether the victim was willing to cooperate with law enforcement during the investigation of the crime had a statistically significant effect on both charging decisions, as did the suspect's use of a weapon. On the other hand, the promptness of the victim's report, the number of witnesses, and whether physical evidence was recovered had a significant effect only during the pre-arrest charge evaluation process.

### **Interviews with LAPD and LASD Detectives**

- The interview data indicate that, perhaps more than any other crime given the investigative difficulties specific to these cases, detectives have to *want* to work sexual assault; otherwise they will do a disservice to the department's image, to the junior detectives who look to them for guidance, and to sexual assault victims in the City of Los Angeles.
- Findings from the interviews revealed that detectives had two approaches to rape victims: "innocent until proven guilty" and "guilty until proven innocent." The innocent until proven guilty approach is characterized by: (1) a passion for working sex crimes; (2) engaging the victim as an ally in the investigation; (3) expecting victim inconsistencies based partially on extant law enforcement protocols and trauma-related factors; (4) assertions that false reports are rare; (5) knowledge of the dynamics related to delayed reporting; (5) a belief that cases involving alcohol, drugs, or prior/initially consensual sex are serious cases and occur with more frequency than stranger rape; and (6) frustration that departmental leadership does not take sexual assault as seriously as homicide (this was emphasized more by LAPD detectives).
- In contrast, the guilty until proven innocent approach is characterized by: (1) an emphasis that stranger rape is the only "real" rape; (2) a belief that nonstranger sexual assault is not as serious as stranger rape and is often the victim's fault; (3) statements that any victim inconsistency ruins her credibility; (4) an emphasis on the ubiquity of false reporting and victims' lack of cooperation; (5) responses to interview questions based on the "righteousness" of the victim; (6) reluctance to unwillingness to arrest in "he said/she said" cases.

- Findings reveal: (1) nonstranger sexual assault is the most frequently reported victim/suspect relationship to both the LAPD and LASD; (2) many detectives interpreted probable cause differently depending on whether the case involved strangers versus nonstrangers; (3) many detectives stated that pre-arrest charge evaluation of nonstranger sexual assault is standard operating procedure.
- Statements regarding the decision to arrest indicate: (1) all detectives will arrest (where possible) in stranger cases; (2) some detectives arrest based on the presence of probable cause regardless of whether the victim and suspect are acquainted; and (3) some detectives will *never* arrest in nonstranger cases, preferring instead to present the case to the district attorney's office for a pre-arrest filing evaluation. When the district attorney declines to file charges based on insufficient evidence, the detective will then inappropriately clear the case by exceptional means.
  - Taking a case to the DA for a reject where probable cause exists to arrest but the detective abstains from making the arrest is problematic for two reasons: (1) for FBI purposes, law enforcement cannot count cases as cleared/solved when probable cause to arrest the suspect *does not* exist, or where probable cause *does* exist but law enforcement refrains from making an arrest out of personal preference rather than for a reason beyond their control; (2) when utilized as a way to dispose of nonstranger cases, the pre-arrest charge evaluation process conflates probable cause and proof beyond a reasonable doubt, and it decreases the likelihood that nonstranger sexual assault suspects will be arrested and prosecuted.

### **Interviews with Deputy District Attorneys**

- Whereas the two approaches to sexual assault victims evidenced by LAPD and LASD detectives were “innocent until proven guilty” and “guilty until proven innocent,” the interviews revealed that deputy district attorneys’ approaches to sex crimes are best characterized as those who “look for corroboration” and those who “look for reasons to reject.” All prosecutors stated that their charging decisions were based on their assessments of the likelihood of a conviction at trial, which, in turn, reflected jurors’ preconceived notions of what constitutes rape.
- Prosecutors attributed the pre-arrest charge evaluation process described by detectives to the consequences of delayed reporting, office policy that dictates that only cases that meet the standard of proof beyond a reasonable doubt be filed, and office policy that requires a pre-filing interview with victims. They stated that pre-arrest charge evaluation would be unlikely in a stranger rape because the victim’s credibility is less likely to be challenged and the perceived threat to public safety would translate into the police making an immediate arrest (assuming the suspect is identified). They also emphasized that they do not control the arrest decision and that the discretion to make that decision is law enforcement’s in all cases.

- Prosecutors emphasized that filing decisions were made using a trial sufficiency standard—that is, charges would not be filed unless there was proof beyond a reasonable doubt and a strong likelihood of conviction at a jury trial. They also stated that although vertical prosecution is the goal in the VIP program, it does not always occur in practice. All agreed that the consequences of shows such as *CSI* are juror pools that demonstrate unrealistic expectations of when, where, and why DNA may be present in a case, along with the time it takes to receive results from the crime lab. There was also consensus that cases involving DNA and suspects and victims who are strangers are the closest one can come to a slam-dunk case, but prosecutors varied in the extent to which they emphasized DNA as relevant in nonstranger cases.
- Prosecutors agreed that getting defendants to register as sex offenders is an important component of sentencing. However, they also stated that plea-bargaining strategies vary depending on the courthouse and the supervisor. Although they noted that sex crimes are notable for lengthy sentences, this was most often in relation to child cases or those involving weapons and additional crimes—such as home invasion, robbery, or burglary—which are typically associated with stranger rape. Only two interviewees specifically addressed acquaintance rape in relation to plea-bargaining. Prosecutors reiterated a need for only those people who want to work these types of cases to be assigned to them, better front-end investigations by law enforcement with regards to interviewing and evidence collection, faster processing from the crime lab in sexual assault cases, and juror education.

### **Interviews with Sexual Assault Survivors**

- This section reviews the findings from interviews with seventeen adult female sexual assault victims who were assaulted by a combination of strangers, acquaintances, and intimate partners. Participants' descriptions of their interactions with the criminal justice system suggest that, with few exceptions, they encountered detectives with a "Guilty until proven innocent" approach to sex crimes victims. Similarly, the sole victim out of seventeen whose suspect was in custody when the case was presented to the DA's office encountered a prosecutor who was "looking for reasons to reject."
- Participants reported being cooperative with the criminal justice process despite the fact that cooperation was not necessarily reciprocated by law enforcement and/or prosecutors, and all but one stated that they would advise future victims to report to the police so that suspects will be sanctioned and accrue a criminal history. It is also important to emphasize that deference to the knowledge of the detective and prosecutor was a consistent theme in these women's stories; in other words, they responded to the tones set by the criminal justice officials tasked with their case.

## Conclusions

- Consistent with the findings of prior research, we found that there is *substantial attrition in sexual assault cases reported to the LAPD and the LASD*. Among cases reported to the LAPD, only one in nine was cleared by arrest, fewer than one in ten resulted in the filing of charges, and only one in thirteen resulted in a conviction. For cases reported to the LASD, about one in four reports was cleared by arrest, one in six resulted in the filing of charges, and one in seven resulted in a conviction.
- The locus of case attrition is the decision to arrest or not; the overwhelming majority of reports of sexual assault do not result in the arrest of a suspect.
- Although prosecutors have an ethical duty to file charges only in cases where there is a reasonable probability of conviction, the consequence of pre-arrest charge evaluations is the disposal of cases in which the identity of the suspect is known, there is probable cause to make an arrest, but the detective investigating the case believes that it would be difficult, although not impossible, to prove the suspect's guilt at trial. Some of these are cases in which the victim is unwilling to cooperate in the investigation and prosecution of the suspect. However, interviews revealed that often the cases that are presented to the district attorney before an arrest is made are cases that have not been thoroughly investigated by law enforcement that are presented to the district attorney in anticipation of a "reject."
- Unfounding sexual assault reports occurs infrequently and most of the reports that were unfounded by the LAPD were false or baseless reports.
- Each law enforcement agency's case clearance data are compromised by the misuse of the exceptional clearance.
- Sexual assault by a stranger is the least frequently occurring form of sexual assault in Los Angeles City and County in terms of cases reported to, investigated by, and prosecuted by the LAPD, LASD, and LA County District Attorney's office. However, both law enforcement officials and prosecutors spoke of public safety—specifically around the need to arrest—as more pressing and serious in cases involving strangers, and more frequently used the term "righteous victim" when describing the victim of a sexual assault by a stranger.

## Policy Implications for the LA County DA's office

- The DA's Office should file charges in more cases that meet the legal elements of the crime and in which the victim is willing to cooperate. To clarify, we are recommending that in cases in which the victim is cooperative, the DA's Office should more often use a legal sufficiency standard, as opposed to a trial sufficiency standard. We are not recommending that the DA's Office file charges using a probable cause standard.
- Establish a formal process in conjunction with law enforcement for the pre-filing interview with the victim so that one interview occurs with both law enforcement and the district attorney's office present. This will reduce the trauma for victims and make it less likely that inconsistencies in the words the victim uses to describe the assault to law enforcement officials and prosecutors will result in the rejection of charges. To clarify, we are not recommending that the pre-filing interview with the victim be eliminated.

- Given the salience of victim consistency and credibility to sexual assault prosecution, it is important to train DDAs about effective interviewing with traumatized rape victims.
- Although LA County District Attorney Steve Cooley is notable for being at the forefront of providing DNA training for his prosecutors and for law enforcement, interview data suggested that both law enforcement and prosecutors had varying degrees of clarity as to the value of DNA evidence in nonstranger sexual assault cases in which the suspect utilizes a consent defense. To address this, future training could incorporate examples of sufficient evidence to prosecute in cases where the suspect uses a consent defense and clarify department expectations as to how DNA evidence is most effectively utilized to prosecute nonstranger sexual assault.
- Where possible, combine trainings for LAPD, LASD, and DA personnel who specialize in sexual assault.
- Provide detailed reasons for charge rejection and provide victims with a copy of the Charge Evaluation Worksheet when charges are rejected.
- Adequately staff VIP offices relative to the number of sex crimes.

### **Policy Implications for the FBI's UCR Program**

- Specific to UCR Part I definition expansion, it should include oral copulation, sodomy, and rape with a foreign object regardless of the gender of the suspect and victim.
  - Any changes should be consistent and applied to both the UCR and NIBRS programs given the ubiquity with which UCR statistics continue to be relied upon by law enforcement executives, police and sheriffs' departments, public officials, researchers, and concerned citizens.
- Revise the UCR Handbook to clarify that for the FBI clearances are based on the police evidentiary standard of probable cause to make an arrest.
  - Specifically, clarify that: (1) "arrested and charged" means a booking procedure by the police; (2) a case that results in an arrest cannot be cleared exceptionally since one of the criteria for an exceptional clearance is that there is something beyond the control of law enforcement that prevents them from making an arrest.
- Present the percentage of cases cleared by arrest and cleared exceptionally separately rather than combined, as is the current practice. This practice contributes to an organizational reluctance to address the misuse of the exceptional clearance by detectives because police leadership is aware that ultimately the FBI presents only one statistic to the public, which is misleading as to how cases are being "solved," especially if the exceptional clearance is being misused, as is the case in Los Angeles.
- Given that rape inherently involves force it is redundant to label it "Forcible" rape. Consider renaming it Rape or Sexual Assault to be consistent with established criminological and epidemiological terminology.

## Policy Implications for the LAPD and LASD

- Regardless of victim age or relationship to the suspect, a professional law enforcement response to sexual assault requires specialized units that are staffed with detectives and supervisors who want to work these types of cases.
- Incorporating rape crisis advocates into the process early will enable detectives to focus on the investigation of the crime.
- Ongoing, specialized training is critical in, at the minimum, interviewing victims, interrogating suspects, and the penal code.
  - Nonstranger sexual assault is the most frequent type of case seen by law enforcement, and therefore training must specifically address investigation of this type of case.
  - Emphasize in training that delayed reporting is the norm in these cases.
  - All investigation and evidence collection-related training activities should have at least one (if not more) nonstranger example for every stranger example, and should reiterate that the armed stranger jumping from the bushes—while an important public safety issue to address—is not the norm.
  - Incorporate active learning exercises specific to California case law in patrol and detective training in sex crimes to increase familiarity with and preparation for trial-related issues and how they can be resolved.
- Interview suspects *in person*. If a suspect is interviewed by phone it should be *in service of a thorough investigation*.
- Record all interviews.
- To be effective, law enforcement must engage the victim as an ally in the investigation.
  - A pretext phone call is much more likely to be successful if the victim and detective are “partners” in the process, but there must be additional investigative strategies to rely upon other than the pretext call. Social networking websites, cell phone messages, and the Internet were repeatedly cited as salient in nonstranger cases in terms of potential evidence.
- Identify evidentiary priorities beyond the pretext phone call to be emphasized in training to investigate nonstranger cases given that the presence of DNA does not negate a consent defense.
- The exceptional clearance should be used only if the case meets UCR criteria for using this type of case clearance.
  - A probable cause arrest for FBI/UCR purposes means the case is cleared by arrest.
  - Cases cleared by exceptional means by definition do not involve cases that result in an arrest.
  - Cases cleared by exceptional means should occur less frequently than cases cleared by arrest.
  - A case in which the DA declined to file charges based on insufficient evidence (that is, evidence that does not meet the standard of proof beyond a reasonable doubt) cannot be cleared by exceptional means if the detective has probable cause to make an arrest but chooses instead to present the case without making the arrest; it must be kept open.

- Assuming a thorough investigation, in cases in which probable cause exists (and in which the victim is willing to cooperate), the police generally should make an arrest and clear the case by arrest.
  - Whether a suspect is arrested should not be contingent on whether the prosecuting attorney believes that the evidence meets a standard of proof beyond a reasonable doubt and that the case therefore would result in a jury conviction. Doing so subjects the decision to arrest to a higher standard of proof than is required by law and effectively gives the prosecutor control over the decision to arrest. It also means that individuals who may have committed a serious crime are not held accountable for their behavior and denies justice to victims who made a difficult decision to report the crime and are willing to cooperate with the police and prosecutor as the case moves forward.
  - Failure to make an arrest in spite of probable cause to do so is reminiscent of police inaction in response to domestic violence prior to the implementation of mandatory arrest policies. Although we are not suggesting that police departments should adopt mandatory arrest policies for sexual assault cases, they should make an arrest when there is sufficient evidence that a crime occurred and that the suspect is the person who committed the crime.
  - Clearly, there are cases where the police cannot—indeed should not—make an arrest. If probable cause to arrest does not exist or if the prosecutor rejects the case for further investigation, the case should be left open and investigated further.
  - Cases in which the police know who and where the suspect is and in which probable cause exists to make an arrest, but the victim refuses to cooperate with the police can legitimately be cleared by exceptional means if the victim’s lack of cooperation means that the police cannot make an arrest.
- The LAPD could reexamine department policy to ensure consistency with the UCR so that felony cases are cleared by arrest upon the arrest of at least one suspect, and detectives’ arrest decisions are less influenced by their perceptions of prosecutorial inaction.
- The LAPD could develop a manual specific to investigating sex crimes that codifies the policies and expectations of detectives (similar to LASD’s Special Victims Manual but including the dynamics specific to teenager and adult victims)
- Rather than handling only cases involving victims under the age of eighteen, LASD’s Special Victims Bureau should assume responsibility for the investigation of all sexual assault cases. The majority of LASD detectives requested this and the DDA interviewees overwhelmingly reiterated that Special Victims Bureau detectives are the best equipped to investigate sexual assault.
- Unless all sex crimes detectives and supervisors utilize an “innocent until proven guilty” approach to victims, the net effect of non-crime reports is to unfound a case without having to do so officially via UCR reporting. This is particularly relevant for the LASD to consider given their five-year unfounding rate was 1.1 percent.

**NOTE: See Appendix C for each agency’s written response to the study.**



## SECTION I

### INTRODUCTION

The past several decades have witnessed significant changes in rape law, both in the United States and elsewhere (Berger, Searles & Neuman, 1988; Jordan, 2004; Marsh, Geist & Kaplan, 1982; Spohn & Horney, 1992). Although the scope of the reforms varied, many jurisdictions replaced the crime of rape with a series of gender-neutral offenses graded by seriousness and with commensurate penalties, loosened or eliminated the resistance and corroboration requirements, repealed marital rape exemptions, and enacted shield laws that restricted the use of evidence of the victim's prior sexual conduct. There also have been important modifications to sexual assault case processing policies and practices. Jurisdictions throughout the United States developed coordinated multidisciplinary approaches to sexual assault (e.g., sexual assault nurse examiners (SANE), sexual assault response teams (SART), and other types of partnerships among criminal justice agencies and service providers), as well as specialized units for the investigation and prosecution of sexual assault cases. These legal and policy changes were designed to improve the treatment of sexual assault victims and thus to prompt more victims to report the crime to the police. They also were designed to improve the response of the criminal justice system to the crime of sexual assault by reducing case attrition and increasing the likelihood of successful prosecution.

Recent statistics suggest that these reforms have not produced the predicted instrumental effects.<sup>3</sup> In 2006, U.S. residents age 12 or older experienced an estimated 272,350 rape and

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<sup>3</sup> For research investigating the impact of the rape law reforms, see Bachman & Paternoster 1993; Berger, Neuman & Searles 1994; Caringella-MacDonald 1984; 2006; Loh 1980; Marsh, Geist & Kaplan 1982; Spohn & Horney 1992. Spohn and Horney (1992), for example, found that the reforms had no impact in five of the six large urban jurisdictions they examined. The reforms did not increase the likelihood of a rape conviction in any of the six cities and they produced an increase in reported rapes and in the likelihood of prosecution only in Detroit, which had the strongest and the most comprehensive reforms. For research on the impact of sexual assault nurse examiners

sexual assault victimizations; however, only 41.4 percent of these victimizations were reported to the police (Bureau of Justice Statistics, 2007).<sup>4</sup> Of forcible rapes reported to the police in 2006, only 39.5 percent were cleared by arrest or by exceptional means (Federal Bureau of Investigation, 2006). There also is evidence that prosecution of rape cases remains problematic. In 2004, the conviction rate for felony defendants charged with rape in the 75 largest counties in the United States was 62 percent; 54 percent of the defendants were convicted of felonies and 8 percent were convicted of misdemeanors (Bureau of Justice Statistics, 2008). The legal and policy changes implemented over the past three decades notwithstanding, sexual assault continues to be a crime characterized by low reporting rates and high rates of case attrition.

The purpose of this study is to document the extent of case attrition in sexual assault cases and to identify the factors that increase the likelihood of case attrition. We use quantitative data on the outcomes of sexual assaults reported to the Los Angeles Police Department and the Los Angeles County Sheriff's Department from January of 2005 to December of 2009, detailed quantitative and qualitative data from case files for a sample of cases reported to the two agencies in 2008, and qualitative data from interviews with detectives and with deputy district attorneys with the Los Angeles District Attorney's Office who handled sexual assault cases during this time period to pursue five interrelated objectives: 1) to document the extent of case attrition and to identify the stages of the criminal justice process where attrition is most likely to occur; 2) to identify the case complexities and evidentiary factors that affect the likelihood of

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(SANE) and sexual assault response teams (SART), see Campbell; 2008; Campbell, Patterson & Lichy, 2005; Cornell, 1998; Crandall & Heitzer, 2003.

<sup>4</sup> The rate of reporting from 1992 to 2000 was even lower; during this time period, only 36 percent of the completed rapes and 34 percent of the attempted rapes were reported to the police. The reporting rate was higher for crimes involving strangers (46 percent) than for crimes involving acquaintances (39 percent) or intimate partners or former partners (23 percent). Reasons given by victims for not reporting the crime to the police included a belief that the victimization was a personal matter, fear of reprisal, and a belief that the police would be biased (Bureau of Justice Statistics, 2002).

attrition in sexual assault cases; 3) to identify the predictors of case outcomes in sexual assault cases; 4) to provide a comprehensive analysis of the factors that lead police to unfound the charges in sexual assault cases; and 5) to identify the situations in which sexual assault cases are being cleared by exceptional means. We also identify the themes that emerged from our interviews with officials in each agency and with sexual assault survivors.

In the section that follows, we provide a review of literature on sexual assault case outcomes. We begin with a brief discussion of the victim's decision to report the crime to the police and to cooperate in the investigation of the crime and prosecution of the suspect. We then focus on the factors that influence the decisions of police and prosecutors in sexual assault cases. In the sections on unbounding and exceptional clearances, we provide a more detailed discussion of prior research.

## **REVIEW OF LITERATURE**

There is compelling evidence that sexual assault is a seriously underreported crime. Tjaden and Thoennes (2006: 33), who analyzed the results of the National Violence Against Women Survey, found that only 19.1 percent of women who were raped since their 18th birthday reported the crime; a similar survey in Canada found that only 6 percent of sexual assaults were reported to the police (DuMont, Miller & Myhr, 2003). Studies using data from the National Crime Victimization Survey (NCVS) also found that reporting rates for sexual assault were lower than those for other violent crimes and that offenses involving nonstrangers had especially low reporting rates (Hindelang & Gottfredson, 1976; Lizotte, 1985; for a more recent review see Fisher, Daigle & Cullen, 2010). Reasons that victims gave for not reporting included: fear of retaliation from the rapist; feelings of shame and embarrassment; a belief that the rape was a

minor incident and not a police matter; and a concern that police and prosecutors would question their veracity and credibility (Bachman, 1998).

Victims who report the crime to the police may nonetheless decide later that they do not want to cooperate in the investigation of the crime or the prosecution of the suspect. They may withdraw their allegations against the suspect, fail to show up for a pre-charging interview, or ask that the case be discontinued. The extent to which this happens is largely unknown; moreover, there is very little research on the factors that influence the victim's decision to "decline prosecution." A study of sexual assault case outcomes in San Diego (Tellis & Spohn, 2008) found that victims refused to cooperate with the police in 36% of the cases; the rate was even higher (42.7%) for victims who reported a felony sexual assault to the police in Tucson, Arizona (Spohn, Rodriguez & Koss, 2008). Holmstrom and Burgess (1978: 58-59) found that a fourth of the victims in their study changed their minds about cooperating with police and prosecutors, with most of them becoming "less willing to press charges because of their increasing concern about what court would entail" or because they were worried about retaliation from the suspect or his family and friends if they pursued the case.

Regarding the factors that influence the victim's decision, research has shown that cooperation is more likely if the crime is more serious (Kerstetter, 1990) or the victim suffered collateral injuries (Spohn et al., 2008), if the victim was assaulted by a stranger rather than an acquaintance or dating partner (Tellis & Spohn, 2008), if there were witnesses or forensic evidence that could corroborate the victim's testimony (Kerstetter, 1990; Spohn et al., 2008); cooperation was less likely if the victim was under the influence of alcohol or drugs or had a history of drug use (Spohn et al., 2008; Tellis & Spohn, 2008).

These findings suggest that victims of sexual assaults that do not conform to stereotypes of real rapes with genuine victims may receive either overt or subtle messages from police regarding the difficulties that will be encountered in prosecuting the case (Kerstetter & Van Winkle, 1990). As Kerstetter (1990: 309) noted, a police officer who believes that a case is unlikely to be solved may attempt to convince the victim that it is not in her interest to pursue the case; s[he] “may vividly portray to the complainant the personal costs involved by emphasizing such things as the repeated trips to court, the inevitable delays at court, and the humiliating cross-examination by defense counsel.” Given the importance of victim cooperation for later case processing decisions (see below), these findings are an obvious cause of concern.

Victims of sexual assault who report the crime to the police and are willing to cooperate with police and prosecutors as the case moves forward may confront criminal justice officials who are skeptical of their allegations and who question their credibility (cf., Estrich, 1987). The process begins with the police, who decide whether a crime has occurred, the amount of investigative resources to devote to identifying the suspect, whether to make an arrest of an identified suspect and, if so, the charges to file, and whether to refer the case to the prosecutor. These “gatekeeping” (Kerstetter, 1990) decisions, which largely determine the fate of the case, do not necessarily produce the outcome—arrest and successful prosecution—that the victim expected. As Taylor (1987: 89) pointed out, “Police determine how rape victims and cases are treated by the criminal justice system. . . . After giving a valid rape report and fully cooperating with the police, a woman may find herself in the unexpected and bewildering predicament of having come to the police for aid . . . only to have the door slammed firmly in her face.”

Police Unfounding Decision. One of the most important, and highly criticized, decisions made by the police is the decision whether to “unfound” the charges. If the police officer

investigating the crime believes the victim's account of what happened and determines that the incident constitutes a crime, the case becomes one of the "crimes known to the police" that will be included in the jurisdiction's crime statistics. If, on the other hand, the officer does not believe the victim's story and therefore concludes that a crime did not occur, the case is unfounded.

Technically, cases can be unfounded only if the police determine that a crime did not occur. In reality, police may use the unfounding decision to clear—or "erase" (Konradi, 2007)—cases in which they are convinced that a crime occurred but also believe that the likelihood of arrest and prosecution is low. According to Martin (2006), police departments are evaluated in terms of clearance rates, which "encourages officers to unfound ambiguous or difficult cases, including those where a victim is reluctant, emotional, uncooperative, or compromised in some way (e.g., had smoked marijuana, was a prostitute, had a former sexual relationship with the rapist" (p. 53). Martin (1987; see also McCahill et al., 1979) similarly argues that police may label a case unfounded for illegitimate reasons, including the fact that they do not like the woman (e.g., she is poor, African American or Hispanic, a prostitute, or has a criminal record), they believe that the victim in some way precipitated the attack, or they believe that her case will not stand up at trial.

There is very limited research on police unfounding decisions in sexual assault cases and most of the research that does exist is dated (LaFree, 1989; Kerstetter, 1990; McCahill et al., 1979; for more recent research see Bouffard, 2000; Tellis & Spohn, 2008). An early study by the Law Enforcement Assistance Administration (1977), in which police officers were asked to identify the factors that affected their decisions, found that the two most important predictors of whether cases would be founded or unfounded were proof of penetration and the suspect's use of physical force. A later study (Kerstetter, 1990) examined sexual assaults reported to the police

in Chicago in 1981. Kerstetter (1990) differentiated between cases in which the identity of the suspect was not known and those in which the victim and the suspect were acquainted in some way. In the “identity” cases, the most important predictors of the police founding decision were the complainant’s willingness to prosecute, whether the victim physically resisted the attack, whether a weapon was used, and whether the suspect was in custody. In contrast, in cases in which the victim and suspect were acquainted, the police were more likely to label the case a crime if the suspect was in custody, if the victim suffered collateral injury, and if there was no discrediting information, such as a pattern of alcohol or drug use, a history of mental illness, or a record of false complaints, about the victim. These findings led Kerstetter (1990) to conclude that the police unfounding decision was affected by a combination of legally relevant instrumental factors and legally irrelevant victim characteristics.

A somewhat different approach was taken by Frazier and Haney (1996), who examined case attrition in 569 sexual assaults reported during 1991 to a Midwestern metropolitan police department. They focused on whether a suspect was identified by the police, whether an identified suspect was questioned by the police, and whether the suspect was referred to the prosecuting attorney for charging. They found that suspects were identified in 273 (48%) of the cases, that the police questioned suspects in 187 (68%) of these cases, and that 68 percent of the suspects who were questioned were referred to the prosecutor (p. 617). Their analysis of the factors that affected these outcomes revealed that identified suspects were more likely to be questioned by the police if they were strangers to the victim, if there was evidence of penetration, if the victim was injured, and if there was a witness to the crime. The only variables that affected whether the case would be referred to the prosecutor for charging were whether the victim was injured and whether the suspect verbally threatened the victim. Similar to Kerstetter,

they concluded that “evidentiary and credibility factors as well as offense severity are associated with cases proceeding to the prosecuting attorney’s office” (Frazier & Haney, 1996: 624).

Decision to Arrest. Similar results were found in studies examining the police decision to make an arrest (Bachman, 1998; Bouffard, 2000; Du Mont & Myhr, 2000; LaFree, 1981; Horney & Spohn, 1996). LaFree’s (1981) analysis of sexual assaults reported to the police in a large metropolitan jurisdiction in the Midwest revealed that the arrest decision was influenced by a combination of legal and extra-legal factors: the victim’s ability to identify the suspect, the victim’s willingness to prosecute, whether the victim engaged in any type of misconduct at the time of the incident, the promptness of the victim’s report, whether the victim was assaulted by an acquaintance rather than a stranger, and the suspect’s use of weapon. On the other hand, the arrest decision was not affected by the victim’s race, whether the victim resisted, the location of the incident, whether there was a witness who could corroborate the victim’s allegations, or whether the victim was injured. These findings led LaFree (1981: 592) to conclude that, at least in this jurisdiction, the emphasis on the role played by “the victim’s attributes and the interpersonal context of the crime” was “greatly overstated.”

Two more recent studies call this conclusion into question. Although Bouffard (2000) found that crimes involving African American suspects and White victims were not more likely than other crimes to result in arrest, he did find that arrest was more likely if the victim and suspect had a prior relationship, if the victim agreed to undergo a sexual assault exam, and if the credibility/seriousness score of the crime (which measured whether other crimes were committed during the sexual offense, whether a weapon was used, and whether the crime occurred outdoors) was higher. He concluded that the “positive effect of the credibility scale might indicate increased police effort devoted to investigating the offense, because they believed the claim was



true or was otherwise ‘worthy’ of investigation” (Bouffard, 2000: 537). Evidence of the role played by victim characteristics also surfaced in a study where police officers evaluated vignettes in which the beverage consumption (beer or cola) of the victim and suspect was systematically varied (Schuller & Stewart, 2000). The authors of this study found that whereas officers’ perceptions of the suspect’s level of intoxication had no effect on their evaluation of the suspect’s credibility, blame, or guilt, perceptions of the victim’s intoxication did affect their assessment of the case. In fact, “the more intoxicated the respondents perceived the victim to be, the less blame they attributed to the alleged perpetrator and the more likely they were to believe that the perpetrator honestly believed that the complainant was willing to engage in intercourse” (Schuller & Stewart, 2000: 547).

Prosecutors’ Charging Decisions. All of the decision makers in the American criminal justice system have a significant amount of unchecked discretionary power, but the one who stands apart from the rest is the prosecutor. The prosecutor decides who will be charged, what charge will be filed, who will be offered a plea bargain, and the type of bargain that will be offered. The prosecutor also may recommend the sentence the offender should receive. As Supreme Court Justice Jackson noted in 1940, "the prosecutor has more control over life, liberty, and reputation than any other person in America" (Davis, 1969: 190).

None of the discretionary decisions made by the prosecutor is more critical than the initial decision to prosecute or not, which has been characterized as "the gateway to justice" (Kerstetter, 1990: 182). Prosecutors have wide discretion at this stage in the process; there are no legislative or judicial guidelines on charging and a decision not to file charges ordinarily is immune from review. As the Supreme Court noted in *Bordenkircher v. Hayes* [(434 U.S. 357, 364), "So long as the prosecutor has probable cause to believe that the accused committed an

offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.”

Research on prosecutors’ charging decisions in sexual assault cases reveals that these decisions are strongly influenced by legally relevant factors such as the seriousness of the crime, the offender’s prior criminal record, and the strength of the evidence in the case (Kingsnorth, MacIntosh & Wentworth, 1999; Spohn & Holleran, 2001; Spohn & Spears, 1996). A number of studies, however, also document the influence of victim characteristics, including the victim’s age, occupation, and education (McCahill et al., 1979), "risk-taking" behavior such as hitchhiking, drinking, or using drugs (LaFree, 1981, McCahill et al., 1979; Spohn et al., 2001; Spohn & Holleran, 2001; Spohn & Spears, 1996), and the character or reputation of the victim (Feild & Bienen, 1980; Feldman-Summers & Lindner, 1976; McCahill et al., 1979; Reskin & Visher, 1986; Spohn et al., 2001).

Relationship, Race and Stereotypes of Rape. A consistent theme found in research on sexual assault case outcomes is the role played by legally irrelevant factors, especially the relationship between the victim and offender, the racial composition of the suspect/victim dyad, and stereotypes regarding “real rapes” and genuine victims.” Consistent with Black’s (1976) relational distance theory, a number of studies conclude that reports of sexual assaults by strangers are more likely than reports of sexual assaults by acquaintances or intimate partners to be investigated thoroughly (McCahill et al., 1979). Stranger assaults also are less likely to be unfounded by the police (Kerstetter, 1990) or rejected by the prosecutor (Battelle Memorial Institute, 1977; Loh, 1980; Spohn et al., 2001); they are more likely to result in police and prosecutor agreement on the severity of charges to be filed (Holleran, Beichner, & Spohn, 2008). Some research, on the other hand, concludes that prosecutors’ charging decisions in sexual

assault cases are not directly affected by the victim-suspect relationship. Rather, different predictors affect charging decisions in stranger and acquaintance cases (Kingsnorth et al., 1999; Spohn & Holleran, 2001).

Adding to the already complicated dynamics particular to sexual assault case processing is the role played by the race of the victim and the race of the suspect. The sexual stratification hypothesis (LaFree, 1989) posits that reactions to crimes will vary depending upon the race of the suspect and the race of the victim. More to the point, the hypothesis is that sexual assaults involving White women and African American men will be treated more harshly—and thus will be more likely to result in the filing of charges by prosecutors—than those involving other racial combinations. Some scholars argue that the effect of race is unambiguous and omnipresent (Brownmiller, 1975; Spohn, 1994; Kennedy, 1997), whereas others conceive of it in context-specific circumstances that emerge both directly and indirectly (LaFree, 1980, 1989; Kingsnorth et al., 1998; Bouffard, 2000). In other words, extant research indicates that the effect of race on charging decisions is mitigated by both the relationship between the victim and offender and by victim characteristics such as “blame and believability” and “moral character” (Holleran et al., 2008; Horney & Spohn, 1996; Kalven & Zeisel, 1966; Kerstetter, 1990; Spohn & Spears, 1996; Spohn & Holleran, 2001; Spears & Spohn, 1997; Stanko, 1988; Whately, 1996).

A number of scholars contend that the response of the criminal justice system to the crime of rape is predicated on stereotypes about rape and rape victims (Estrich, 1987). LaFree (1989), for example, asserts that nontraditional women, or women who engage in some type of “risk-taking” behavior, are less likely to be viewed as genuine victims who are deserving of protection under the law. Frohmann (1991) similarly maintains that the victim’s allegations will be discredited if they conflict with decision makers’ “repertoire of knowledge” about the

characteristics of sexual assault incidents and the behavior of sexual assault victims, and Estrich (1987) contends that aggravated rapes are taken more seriously and are treated more harshly than are simple rapes.<sup>5</sup> The authors of a comprehensive review of research on the treatment of acquaintance rape in the criminal justice system (Bryden & Lengnick 1997: 1326) reach a similar conclusion, noting that “the prosecution’s heavy burden of proof has played an important role in the justice system’s treatment of acquaintance rape cases, but so have public biases against *certain classes* of alleged rape victims” (emphasis added).

## UNANSWERED QUESTIONS

The research reviewed above suggests that definitive answers to questions concerning sexual assault case outcomes and case processing decisions remain elusive. We know very little about the patterns and causes of case attrition in sexual assault cases, and studies of police and prosecutorial decision making in these types of cases reach somewhat different conclusions. These studies indicate that while legal factors—particularly the seriousness of the crime and the strength of evidence in the case—play an important role in sexual assault case processing decisions, victim characteristics—especially the relationship between the victim and the offender—may also influence these decisions. Some studies conclude that the effect of stereotypes concerning real rapes and genuine victims may not be as pronounced as previous research has suggested, or that the influence of victim characteristics may be conditioned by the nature of the case. Considered together, the results of these studies suggest that additional research designed to untangle the effects of evidence factors and victim characteristics on sexual assault case processing decisions is needed.

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<sup>5</sup> According to Estrich (1987; see also Kalven & Zeisel, 1966), an aggravated rape is one involving multiple suspect, a suspect who is a stranger to the victim, a suspect who used a weapon, or collateral injury to the victim. A simple rape is a rape with none of these aggravating circumstances.

Although research on all stages of case processing is required, there is a particular need for research on police decision making, especially the decision to unfound the charges and, in cases in which a suspect has been identified, the decision to clear a case with an arrest or by exceptional means (e.g. Addington and Renisson, 2008). Despite its importance, we know very little about either the prevalence of unbounding or the factors that affect unbounding in sexual assault cases; similarly, there is little research investigating whether unfounded reports are in reality false or baseless, as required by the Uniform Crime Handbook (2004). Understanding and evaluating the response of the criminal justice system to sexual violence is critically important, as is identifying system-generated barriers to reporting and to cooperating with police and prosecutors.

## **RESEARCH DESIGN AND METHODS**

This mixed-methods study entailed the collection of quantitative and qualitative data on sex crimes reported to the Los Angeles Police Department (LAPD) and the Los Angeles County Sheriff's Department (LASD). From each agency<sup>6</sup>, we obtained data on all sex crimes<sup>6</sup> involving victims over the age of 12 that were reported from January of 2005 through December of 2009. For those cases that resulted in the arrest of an adult suspect, we obtained data on the outcome of the case from the Los Angeles County District Attorney's Office. We use these longitudinal data to document the broad patterns of case attrition for sexual assaults reported during this time period.

From each agency we also obtained the complete case files for sexual assaults that were reported in 2008; the LAPD and the LASD redacted all information that could be used to identify

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<sup>6</sup> We obtained outcome data on the following sex crimes: rape, attempted rape, sexual penetration with a foreign object, oral copulation, sodomy, unlawful sex, and sexual battery.

the victims, suspects, witnesses, or law enforcement officials assigned to investigate the case and then provided us with a copy of the redacted file. From the LASD we obtained case files for all reports that met our selection criteria (N = 543). Due to the large number of cases reported to the LAPD in 2008, we selected a stratified random sample of cases (N = 401). Because we wanted to ensure an adequate number of cases from each of the LAPD's 19 divisions,<sup>7</sup> as well as an adequate number of cases from each case clearance category (cleared by arrest, cleared by exceptional means, investigation continuing, and unfounded), the sample was stratified by LAPD division and, within each division, by the type of case clearance.<sup>8</sup> We then created a weighted sample that divided the percentage of each stratum (that is, each case closure type for each division) in the population of cases by the percentage of each stratum in the sample.<sup>9</sup> We use the unweighted data when we are focusing on a particular type of case closure (e.g., unfounded cases or cases that were cleared by exceptional means). We use the weighted data when discussing 2008 case outcomes and when providing descriptive statistics for these cases.

Because we were provided with the complete case file for each of the 2008 cases, we were able to extract very detailed information (quantitative and qualitative data) on each case. The case file included the crime report prepared by the patrol officer who responded to the crime and took the initial report from the complainant, all follow-up reports prepared by the detective to whom the case was assigned for investigation, and the detective's reasons for unbounding the

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<sup>7</sup> Although the LAPD currently has 21 divisions in 4 bureaus, in 2008 there were only 19 divisions.

<sup>8</sup> Our goal was to select 6 cases from each case closure type from each of the 19 divisions that existed in 2008. This would have produced a sample of 456 cases. Because each division did not necessarily have 6 cases from each case closure type in 2008, the final sample included 401 cases.

<sup>9</sup> To illustrate, in 2008 there were 15 cases from the Central Division that were cleared by arrest (0.7% of all of the 2008 cases); our sample contained 5 cases from the Central Division that were cleared by arrest (1.2% of all of the cases in the sample). Thus, Central Division cases that were cleared by arrest were overrepresented in the sample of cases. Dividing the proportion of cases in the population (0.7%) by the proportion of cases in the sample (1.2%) yielded a weight of .58 for the cases in this stratum. In contrast, Rampart Division cases that were cleared by arrest were underrepresented in our sample. There were 35 cases (1.7%) in the population but only 5 cases (1.2%) in the sample. Dividing the proportion of cases in the population (1.7%) by the proportion of cases in the sample (1.2%) produced a weight of 1.42 for the cases in this stratum.

report or for clearing the case by arrest or by exceptional means. The case files also included either verbatim accounts or summaries of statements made by the complainant, by witnesses (if any), and by the suspect (if the suspect was interviewed); a description of physical evidence recovered from the alleged crime scene, and the results of the physical exam (forensic medical sexual assault exam) of the victim (if the victim reported the crime within 72 hours of the alleged assault). Members of the research team (the two co-principal investigators and a graduate student at California State University, Los Angeles) read through each case file and recorded data in an SPSS data file. Coding protocols were developed by the co-principal investigators; the co-principal investigators reviewed a sample of the files coded by the graduate student to ensure that there was consistency and inter-code reliability.

Our third source of data comes from interviews with 1) LAPD and LASD detectives who had experience investigating sexual assaults, 2) deputy district attorneys from the Victim Impact Program, and 3) sexual assault survivors. We interviewed 52 detectives from the Los Angeles Police Department, 24 from the Los Angeles County Sheriff's Department, and 30 attorneys from the Los Angeles County District Attorney's Office. We also partnered with three LA agencies—the Domestic Abuse Center, the Valley Trauma Center, and the UCLA Rape Treatment Center—and interviewed 17 sexual assault survivors about their experiences with the criminal justice system. (Copies of the interview protocols can be found in Appendix A.) The two principal investigators conducted all of the interviews and recorded responses in a text file.

In the sections that follow, we present the findings of our study. We begin by describing the overall patterns of attrition for cases reported to each agency from 2005 to 2009. We then provide a more detailed analysis of the 2008 cases. This is followed by a discussion of our findings on the decision to arrest or not, the unfounding decision, the decision to clear a case by

exceptional means, and the district attorney's decision to file charges or not. We conclude with a discussion of the themes that emerged from our interviews with detectives, district attorneys, and sexual assault survivors.



## SECTION II

### SEXUAL ASSAULT CASE ATTRITION: 2005 TO 2009

An important objective of this project was to identify the outcomes of sexual assaults reported to the LAPD and the LASD and to document where in the process attrition was likely to occur. As noted above, each law enforcement agency provided us with data on all sex crimes that met our selection criteria and that were reported from January of 2005 to December of 2009, and the district attorney's office provided us with outcome data on cases that resulted in the arrest of at least one adult suspect. There were 10,832 cases reported to the LAPD and 3,301 cases reported to the LASD. Of the cases reported to the LAPD, 5,031 (46.4%) were the UCR Part I index offenses of rape and attempted rape, and 5,801 (53.6%) were sexual batteries (n = 4,721) or other sex crimes (i.e., sexual penetration with a foreign object (n = 202), oral copulation (n = 496), sodomy (n = 363), unlawful sex (n = 9), and sex with a child (n = 10)). Of the cases reported to the LASD, 2,269 (68.6%) were the UCR Part I index offenses of rape or attempted rape and 1,040 (31.4%) were sexual batteries (n = 410) or other sex crimes (i.e., sexual penetration with an object (n = 214), oral copulation (n = 303) and sodomy (n = 113). In this section we first focus on the outcomes for the Part I Index offenses of rape and attempted rape. We then discuss the types of cases that are excluded from the UCR definition of forcible rape and provide descriptive data on outcomes of these cases.

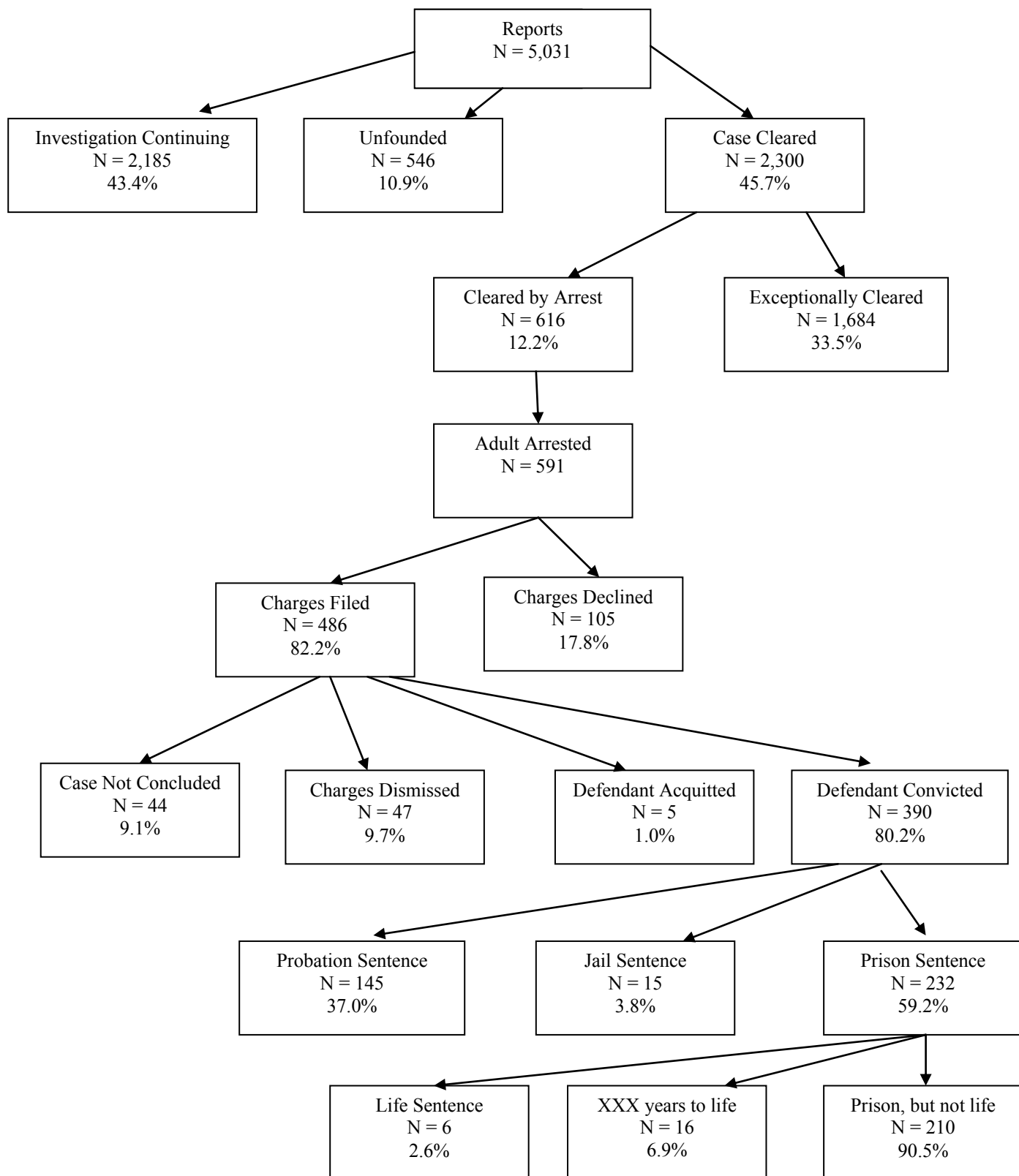
#### CASE OUTCOMES FOR PART I INDEX OFFENSES: LAPD

The outcomes for the 5,031 rapes and attempted rapes reported to the LAPD are shown in Figure II.1. Most cases were either cleared (N = 2,300; 45.7%) or the investigation was still continuing (N = 2,185; 43.4%); there were only 546 cases (10.9%) that were unfounded by the

police during this five-year period. Of the 2,300 cases that were cleared, the majority were cleared by exceptional means (33.5% of all cases) rather than by arrest (12.2%). (See Section VI for a detailed discussion of clearing cases by exceptional means.) Of the 616 cases that were cleared by arrest, 591 resulted in the arrest of at least one adult suspect. The prosecutor filed charges in 486 (82.2%) of these cases and charges were declined in 105 cases (17.8%). Although this is a higher charging rate than is found in most studies of prosecutorial decision making in sexual assault cases, it reflects the fact that the LAPD (and the LASD) present “problematic” cases to the district attorney for a pre-arrest filing decision; if the district attorney believes that the case does not meet their filing standard of proof beyond a reasonable doubt, the case is “rejected” before the suspect is arrested and is then cleared (inappropriately) by exceptional means. As we explain in Section VI, use of this pre-arrest charge evaluation process and overuse of the exceptional clearance reduces the LAPD’s arrest rate.

The fact that the district attorney screens out sexual assault cases in which the evidence does not meet the standard of proof beyond a reasonable doubt is reflected in the conviction rate, which is 80.2 percent; 349 defendants pled guilty, 35 were convicted at a jury trial, and 5 were convicted at a bench trial. Only five defendants were acquitted at trial and charges were dismissed in 47 cases (9.7% of all cases in which charges were filed); an additional 44 cases (9.1%) were still open at the time that the data were provided to us. Of the 390 defendants who were convicted, the majority (N = 232; 59.2%) were sentenced to prison and received a sentence for a fixed term of years rather than a life sentence or a sentence of XXX years to life. Over a third (37.0%) of the convicted defendants were sentenced to probation and 15 (3.8%) received a jail sentence.

Figure II.1: Case Outcomes for Rapes and Attempted Rape Reported to the Los Angeles Police Department: January of 2005 through December of 2009

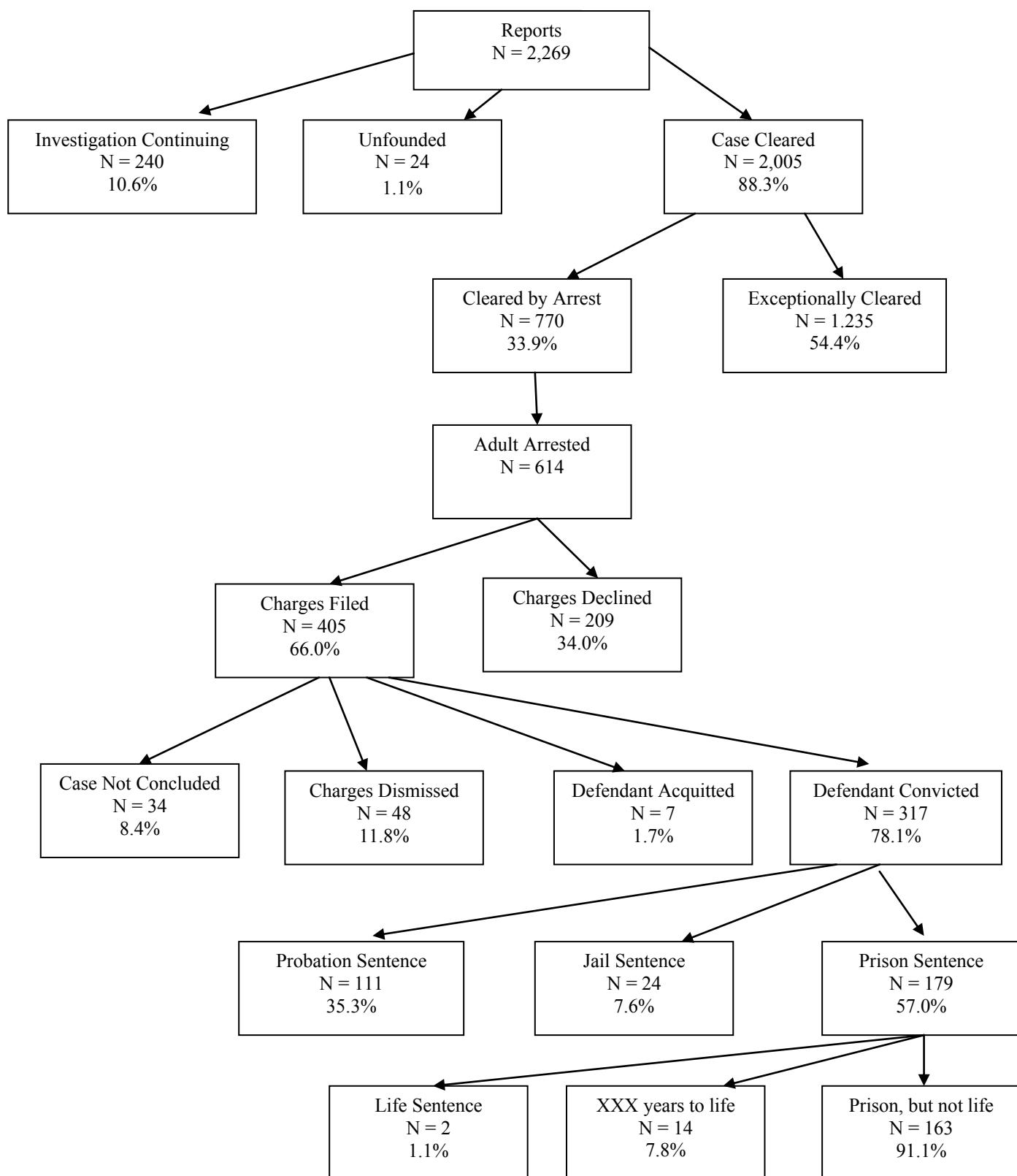


Another way to conceptualize the pattern of case attrition is to calculate the proportion of cases that “survive” successive stages of the process. Using this approach, only 11.7 percent (N=591) of the 5,031 of the rapes and attempted rapes that were reported to the LAPD during this five-year time period were cleared by the arrest of an adult suspect, 9.7 percent (N = 486) resulted in the filing of charges by the prosecutor, 7.8 percent (N = 390) resulted in a conviction, and 4.6 percent (N = 232) resulted in a prison sentence. As these data make clear, the locus of case attrition resides in the decision to arrest (or not).

#### **CASE OUTCOMES FOR PART I INDEX OFFENSES: LASD**

A somewhat different pattern of results is found for the 2,269 UCR Part I rapes and attempted rapes reported to the LASD from 2005-2009 (see Figure II.2). In contrast to the LAPD, which cleared/solved fewer than half of the cases, the clearance rate for the LASD was 88.3 percent; there were only 2240 cases (10.6%) in which the investigation was continuing and only 24 cases that were unfounded. The LASD’s unusually high clearance rate reflects both a higher arrest rate (33.9% versus 12.2% for the LAPD) and a greater use of the exceptional clearance (54.4% versus 33.5% for the LAPD).

Figure II.2: Case Outcomes for Rapes and Attempted Rape Reported to the Los Angeles County Sheriff's Department: January of 2005 through December of 2009



There were 614 adults arrested for rape and attempted rape and charges were filed in 405 (66.0%) of these cases. Although the charging rate for suspects arrested by the LASD is lower than the rate for suspects arrested by the LAPD, it is nonetheless higher than the rates reported in other studies. Again, this reflects a process that weeds out “problematic cases” before an arrest is made. Of the 405 LASD cases in which charges were filed, the conviction rate was 78.1 percent. This is very similar to the rate for LAPD cases (80.2%). The sentences imposed on convicted defendants who were arrested by the LASD also were almost identical to those imposed on convicted defendants arrested by the LAPD. Over half of the defendants were sentenced to prison for a fixed term of years and just over a third were given probation sentences.

In terms of the cases that survived from one stage of the process to the next, 27.1 percent of the 2,269 rape and attempted rape cases that were reported to the LASD during the five-year time period were cleared by the arrest of an adult suspect, 17.8 percent resulted in the filing of charges, 14.0 percent resulted in a conviction, and 8.4 percent resulted in a prison sentence. As was the case with outcomes for the LAPD, these figures illustrate that most cases are filtered out at the arrest stage of the process. Because the arrest rate for the LASD is three times higher than the rate for the LAPD, the proportions of cases that survive successive stages are larger.

## **REPORTS NOT INCLUDED IN PART I INDEX OFFENSE OF FORCIBLE RAPE**

According to the UCR Handbook (2004), forcible rape is defined as “the carnal knowledge of a female forcibly and against her will. Attempts or assaults to commit rape by force or threat of force are also included; however, statutory rape (without force) and other sex offenses are excluded.” The fact that rape is defined as “carnal knowledge” means that acts that do not involve penile-vaginal penetration—including sexual penetration with an object, oral

copulation, and sodomy—are not included as Part I offenses but as “other sex offenses” in Part II of the “crimes known to the police.” Also not included are reports of sexual penetration with an object, oral copulation, and sodomy that are the “secondary crimes” that accompany reports of Part I crimes such as robbery, burglary, and aggravated assault. Despite the fact that most experts would categorize sexual penetration with an object, oral copulation, and sodomy as crimes that fall within the definition of rape/sexual assault, the antiquated definition used by the FBI for Uniform Crime Reporting purposes means that these serious sex offenses are combined with the less serious sexual batteries (i.e., fondling or touching with sexual connotation) as Part II “other sex offenses.”<sup>10</sup>

Table II. 1 Reports of Sex Offenses, 2005 to 2009: LAPD AND LASD

	N	%
Reports Received by LAPD		
Rape or Attempt Rape	5031	82.6
Sexual Penetration with a Foreign Object	202	3.3
Oral Copulation	496	8.1
Sodomy	363	6.0
Reports Received by LASD		
Rape or Attempt Rape	2269	78.2
Sexual Penetration with a Foreign Object	214	7.4
Oral Copulation	303	10.4
Sodomy	113	3.9

The implications of excluding these crimes from the definition of forcible rape are illustrated by the data provided in Table II.1. From 2005 to 2009, the LAPD received 5,031 reports of rape and attempted rape; they received 1,061 reports of oral copulation, penetration

<sup>10</sup> As of November 2011 there is a motion before the FBI’s Criminal Justice Information Services Division’s Advisory Policy Board (APB) Uniform Crime Reporting (UCR) Subcommittee to change the definition of rape in the UCR Summary Reporting Program (SRP) to: “Penetration, no matter how slight, of the vagina or anus with any body part or object ct, or oral penetration by a sex organ of another person, without the consent of the victim.” <http://www.fbi.gov/about-us/cjis/advisory-policy-board>

with an object, and sodomy. If these “other sex offenses” were included in the forcible rape category, the number of reports of forcible rape received by the LAPD during this five-year time period would increase by 21 percent (from 5,031 to 6,092). The figures for the LASD are similar. From 2005 to 2009, the LASD received 2,269 reports of rape and attempted rape; they received 630 reports of oral copulation, penetration with an object, and sodomy. Including these “other sex offenses” in the forcible rape category would have increased the number of reports of forcible rape received by the LASD by more than 27 percent (from 2,269 to 2,899). Stated another way, 17.4 percent of the reports received by the LAPD and 21.7% of the reports received by the LASD during these five years were reports of penetration with a foreign object, oral copulation, and sodomy.



### **SECTION III**

#### **CASE OUTCOMES AND CASE CHARACTERISTICS**

#### **FOR RAPE AND ATTEMPTED RAPE CASES, 2008**

The data discussed thus far provide an overview of the outcomes of rape and attempted rape cases reported to the two law enforcement agencies from 2005 to 2009. However, these data do not address questions regarding the characteristics of cases that were reported to the agencies or the outcomes of various types of cases. We use the detailed data collected from the redacted case files provided by each agency to provide more detailed descriptions of case outcomes and to describe the characteristics of victims, suspects and cases.

#### **CASE OUTCOMES**

As shown in Table III.1, the outcomes of cases reported in 2008 were very similar to the outcomes for cases from 2005 to 2000 that are presented in Figures 1 and 2. However, because we had access to the case files, we were able to identify cases that resulted in an arrest but that were cleared exceptionally when the district attorney refused to file charges (as we explain in Section VI, these cases should not have been cleared by exceptional means given statements in the UCR Handbook indicating that the exceptional clearance is to be used when factors beyond the control of law enforcement *prevent them from making an arrest*). We also were able to calculate case outcomes for cases in which the victim and suspect were strangers and cases in which the victim and suspect were nonstrangers.

Turning first to the cases that were exceptionally cleared, 12.8 percent of the LAPD cases and 9.0 percent of the LASD cases were cases in which the police initially made an arrest but then cleared the case by exceptional means when the district attorney decided not to file charges. Adding these cases to the cases that were cleared by arrest more than doubles the LAPD arrest rate (from 11.7% to 24.5%) and increases the LASD arrest rate from 31.7 percent to 40.7

percent. Reclassifying cases where an arrest was made as exceptional clearances, in other words, substantially reduces the official arrest rate for each agency.

Table III.1. Case Outcomes, 2008, by Relationship between Victim and Suspect

	<b>LAPD (N = 273)<sup>a</sup></b>		<b>LASD (N = 410)</b>	
<b>All Cases</b>	N	%	N	%
Cleared by Arrest (Adult and Juvenile)	32	11.7	130	31.7
Cleared Exceptionally	92	33.6	235	57.3
<i>After making an arrest</i>	<b>35</b>	<b>12.8</b>	<b>37</b>	<b>9.0</b>
Investigation Continuing	119	43.4	38	9.3
Report Unfounded	30	10.9	7	1.7
Suspect Arrested (Cleared by arrest + exceptionally cleared after making an arrest)	67	24.5	176	40.7
<b>Cases Involving Strangers</b>	<b>LAPD (N = 112)</b>		<b>LASD (N = 87)</b>	
Cleared by Arrest (Adult and Juvenile)	9	8.0	19	21.8
Cleared Exceptionally	17	15.2	48	55.2
<i>After making an arrest</i>	<b>5</b>	<b>4.5</b>	<b>7</b>	<b>8.0</b>
Investigation Continuing	71	63.4	19	21.8
Report Unfounded	15	13.4	1	1.1
Suspect Arrested (Cleared by arrest + exceptionally cleared after making an arrest)	14	12.5	26	29.9
<b>Cases Involving Nonstrangers</b>	<b>LAPD (N = 161)</b>		<b>LASD (N = 318)</b>	
Cleared by Arrest (Adult and Juvenile)	23	14.3	110	34.5
Cleared Exceptionally	75	46.6	184	57.7
<i>After making an arrest</i>	<b>30</b>	<b>18.6</b>	<b>39</b>	<b>12.2</b>
Investigation Continuing	48	29.8	18	5.6
Report Unfounded	15	9.3	6	1.9
Suspect Arrested (Cleared by arrest + exceptionally cleared after making an arrest)	53	32.9	149	46.7

<sup>a</sup> Weighted sample of cases.

The data indicate that cases involving strangers were cleared differently than cases involving nonstrangers. The percentages of cases that were cleared by arrest were higher for cases involving nonstrangers than for cases involving strangers for each agency; in contrast, cases involving strangers were substantially more likely than those involving nonstrangers to be categorized as open/investigation continuing. These patterns no doubt reflect the fact that cases involving strangers were less likely than those involving nonstrangers to have an identified suspect. The patterns for cases cleared by exceptional means are very different for the two law enforcement agencies. Whereas the LAPD was significantly more likely to use the exceptional clearance in cases in which the victim and suspect were nonstrangers, the LASD cleared about the same proportions of stranger and nonstranger cases by exceptional means. Table III.1 also documents that cases in which the victim and suspect were nonstrangers were more likely to be cleared by exceptional means following an arrest and charge rejection by the prosecutor than were cases in which the victim and suspect were strangers. Thus, the effect of this (clearing by exceptional means following an arrest) is manifested most clearly in terms of the overall arrest rates for the nonstranger cases. The nonstranger arrest rate increases from 14.3 percent to 32.9 percent for the LAPD and from 34.5 percent to 46.7 percent for the LASD when cases that were cleared by exceptional means after an arrest has been made are included.

## **VICTIM, SUSPECT AND CASE CHARACTERISTICS**

The victim, suspect, and case characteristics for the 2008 cases are presented in Tables III.2 through III.4. As shown in Table III.2, the typical victim (both agencies) was a Latina in her mid-20's. Substantial numbers of victims reported that they were drinking or drunk at the time Incident, but the number reporting use of illegal drugs was low. Most victims were not engaged

Table III.2. Victim Characteristics, 2008 Rape and Attempted Rape Cases

Victim Characteristics	LAPD (N = 273) <sup>a</sup>		LASD (N = 410)	
	N	%	N	%
<b>Background Characteristics</b>				
Age (mean)	27.4		25.6	
Race/Ethnicity				
Caucasian	65	23.9	87	22.0
Hispanic/Latina	127	46.7	191	48.2
African American	74	27.1	97	24.5
Asian American/Other	6	2.1	21	5.3
<b>Credibility Factors</b>				
Criminal record	34	12.4	13	3.2
Gang affiliation mentioned in report	11	3.9	3	0.7
Drinking at time of incident	80	29.3	97	23.8
Drunk at time of incident	66	24.1	67	16.3
Using illegal drugs at time of incident	20	7.4	27	6.6
Passed out (not drugged)	41	15.0	43	10.5
Walking alone late at night	30	10.9	8	3.4
Accepted a ride from a stranger	24	8.9	8	3.4
Mental health issues	34	12.6	33	8.1
Sex worker	21	7.8	4	1.7
Injured during assault	119	43.6	193	47.1
Inconsistent statements to police	54	20.0	48	11.8
No physical or verbal resistance	74	27.3	81	19.8
Verbal resistance only	47	17.1	76	18.5
Physical resistance only	28	10.3	32	7.8
Verbal and physical resistance	124	45.3	221	53.9
Reported within one hour	71	25.8	84	20.5
<b>Cooperation With Law Enforcement</b>				
Identified suspect by full name and address	109	39.8	245	59.8
Cooperative during police investigation	154	56.3	296	72.5
Recanted her allegation	26	9.4	21	5.1
Moved residences after the assault	43	15.8	25	6.1
Did not want suspect arrested	29	10.6	37	9.1

<sup>a</sup> Weighted sample of cases.

in any type of risky behavior at the time of the incident and the number of victims with documented mental health issues noted in the case file was low. Nearly half of the victims suffered some type of collateral injury during the assault and stated that they resisted the suspect both verbally and physically. Most victims did not report the crime within one hour. In terms of

the victim’s willingness to cooperate with law enforcement, Table III.2 illustrates that a substantial proportion of victims was able to identify the suspect by full name and address (39.8% of those who reported to the LAPD and 59.8% of those who reported to the LASD) and were cooperative during the investigation of the crime by the police (56.3% for LAPD and 72.5% for LASD). Very few victims recanted their allegations and only about 1 in every 10 indicated that they did not want the suspect arrested.

The suspect characteristics for the rape and attempted rape cases are shown in Table III.3. We do not present data on the sociodemographic characteristics of suspects due to the fact that in a substantial number of cases handled by each agency there was not an identified suspect (39.7% of the LAPD cases and 15.1% of the LASD cases did not have an identified suspect). In these cases, in other words, we would have had to rely on the victim’s perception of the age and race/ethnicity of the suspect.

Table III.3. Suspect Characteristics, 2008 Rape and Attempted Rape Cases

Suspect Characteristics	LAPD (N = 273) <sup>a</sup>		LASD (N=410)	
	N	%	N	%
Gang affiliation mentioned in report	32	11.6	40	9.8
Drugged victim	10	3.7	38	9.5
Physically assaulted victim, this incident	164	60.1	204	49.8
Weapon used	73	26.6	47	11.5
Bodily force only to subdue victim	192	70.2	333	81.2
Defense in statement to police <sup>b</sup>				
Consent	48	51.9	96	45.7
Incident fabricated	32	34.7	71	33.8
Incorrect identification	3	2.8	3	1.4
Admitted/confessed	10	10.7	40	19.0

<sup>a</sup>Weighted sample of cases.

<sup>b</sup>Of the identified suspects who gave a statement to law enforcement.

Most of the suspects in these cases were not affiliated with a gang and most did not drug their victims prior to the alleged assault. Nearly two-thirds (60.1%) of the suspects in the LAPD cases and half (49.8%) of the suspects in the LASD cases physically, as well as sexually, assaulted the victims during the incident that generated the police report. Most of the suspects subdued their victims using bodily force only, but more than one fourth (26.6%) of the suspects in the LAPD cases used a gun, knife or some other type of weapon to subdue the victim. In contrast, only 11.5 percent of the cases reported to the LASD were cases in which suspects used weapons. Of the suspects who gave a statement to the law enforcement agency, the most common defense was that the sexual contact with the victim was consensual, followed by an assertion that the incident was fabricated by the complainant. Very few suspects claimed that they had been incorrectly identified and only 10 (10.7%) of the LAPD suspects and 40 (19.0%) of the LASD suspects admitted or confessed to the crime for which they were under investigation.

Table III.4 presents the characteristics of the cases reported to each agency, as well as data on the investigation conducted by the agency. The most serious charge listed on the police report was rape (i.e., forcible rape, rape of a spouse, rape by intoxication, sodomy, oral copulation, and rape with an object) rather than attempted rape. The majority of the crimes occurred at night—that is, from 6 p.m. to midnight or from midnight to 6 a.m. Very few of the incidents took place between 6 a.m. and noon.

Case Characteristics	LAPD (N = 273)		LASD (N = 410)	
	N	%	N	%
<b>Rape or attempted rape charge</b>				
Rape	234	85.6	347	84.6
Attempted rape	39	14.4	63	15.4
<b>Time of day when crime occurred</b>				
Midnight to 6 a.m.	82	30.2	57	15.0
6 a.m. to noon	44	16.1	77	20.3
Noon to 6 p.m.	61	22.4	113	29.7
6 p.m. to midnight	85	31.4	133	35.0
<b>Relationship between victim and suspect</b>				
Strangers	112	41.0	87	21.4
Nonstrangers	91	33.4	209	51.5
Intimate partners	70	25.6	110	27.1
Length of relationship (mean)	6.2 yrs		4.4 yrs	
Victim and suspect have a child	19	20.9		27.5
<b>Evidence</b>				
At least one witness	108	40.5	176	43.0
Witness corroborates victim's story	41	42.9	40	24.8
Witness corroborates suspect's story	9	16.1	13	12.5
Forensic medical exam conducted	146	53.5	203	49.8
Any type of physical evidence recovered	132	48.3	197	48.0
<b>Characteristics of Police Investigation</b>				
LAPD/LASD can identify suspect	165	60.3	348	84.9
LAPD/LASD interviewed suspect <sup>b</sup>	93	56.4	212	60.9
LAPD/LASD interviewed witnesses <sup>c</sup>	7	89.8	156	88.6
LAPD/LASD conducted pretext phone call <sup>b</sup>	12	7.2	22	6.3
LAPD/LASD got photos of victim's injuries <sup>d</sup>	77	64.7	160	82.9

<sup>a</sup>Weighted sample of cases.

<sup>b</sup>Of the identified suspects who gave a statement to law enforcement.

<sup>c</sup>Of cases in which there was at least one witness.

<sup>d</sup>Of cases in which the victim suffered collateral injuries.

In terms of the relationship between the victim and the suspect, the majority of the cases reported to each law enforcement agency were cases involving nonstrangers. This was particularly true for cases reported to the LASD, where more than three-fourths of all cases involved victims and suspects who were nonstrangers (51.5%) or intimate partners (27.1%); only

21.4 percent of the LASD cases were cases involving strangers. In contrast, 41.0 percent of the cases reported to the LAPD were cases involving strangers, 33.4 percent were cases involving nonstrangers, and 25.6 percent were cases involving intimate partners. These differences lead to similar differences in the percentages of cases in which a suspect is positively identified; 84.9 percent of the LASD cases, but only 60.3 percent of the LAPD cases had an identified suspect. Of the cases involving intimate partners, the mean length of the relationship varied from 6.2 years (LAPD) to 4.4 years (LASD); most of the suspects and victims in this category did not have a child together.

Between 40 and 50 percent of these cases were cases with at least one witness and in which some type of physical evidence (e.g., clothing, bedding, hair, fibers, blood, weapon, semen) was recovered from the scene of the crime or from the victim or suspect. If there was a witness, the witness was much more likely to corroborate the victim's testimony than that of the suspect. In about half of the cases (53.5% for LAPD and 49.8% for LASD) the victim underwent a forensic medical exam.

We collected data on a number of indicators of the steps taken by the law enforcement agency during the investigation of the crime. As shown in Table III.4, police were substantially more likely to interview witnesses (in cases in which there was at least one witness) than suspects (in cases in which there was an identified suspect). The LAPD interviewed witnesses in 89.8 percent of the cases but interviewed suspects in only 56.4 percent of the cases; similarly witnesses were interviewed by the LASD in 88.6 percent of the cases but suspects were interviewed in only 60.9 percent of the cases. This no doubt reflects that fact that whereas suspects have a right to refuse to speak to law enforcement, witnesses do not. Although our interviews with detectives in each agency revealed that the "pretext phone call"—that is, a phone



call made by the victim to the suspect in which the victim attempts to get the suspect to incriminate himself—was regarded as an effective investigatory technique, we found that these calls were used in a very small percentage of the cases (7.2% for LAPD and 6.3% for LASD). Moreover, the investigating officers did not always photograph the victim's injuries; in cases in which the victim suffered collateral injuries, her injuries were photographed in only 64.7 percent of the cases handled by the LAPD and in 82.9 percent of the cases handled by the LASD. (This could reflect the fact that victims claimed that they suffered collateral injuries during the assault but reported the assault after evidence of these injuries had disappeared.)

### **SUMMARY: CASE OUTCOMES AND CASE CHARACTERISTICS**

Data on the cases reported to the LAPD and LASD in 2008 reveal that the LASD is substantially more likely than the LAPD to clear rape and attempted rape cases by arresting at least one suspect; the official arrest rate (that is, the rate of cases in which the final case clearance is cleared by arrest) is 31.7 percent for the LASD but only 11.7 percent for the LAPD. This may reflect the fact that the cases reported to the LAPD are about twice as likely as those reported to the LASD (41.0% versus 21.4%) to involve victims and suspects who are strangers, as well as the related fact that the LASD cases are substantially more likely than the LAPD cases to have an identified suspect (84.9% versus 60.3%).

Our results also reveal that each agency overuses the exceptional clearance; a third of the cases reported to the LAPD and more than half of those reported to the LASD were cleared exceptionally. This leads to an overall rate of cases cleared by arrest for Uniform Crime Reporting purposes of 55.3 percent for the LAPD and 89.0 percent for the LASD; both of these rates, and particularly the rate for the LASD, are substantially higher than the national average for forcible rape, which was 39.5 percent in 2006 (Federal Bureau of Investigation, 2006). As we

explain in more detail in Section VI of this report, each agency uses this case clearance category inappropriately in a significant proportion of cases. In fact, each agency's use of the this case clearance type in cases in which an arrest is made but the district attorney refuses to file charges (and thus the case clearance is changed from cleared by arrest to cleared by exceptional means) artificially depresses each agency's official arrest rate. If cases in which an arrest is made were consistently cleared by arrest, the LAPD arrest rate would be 24.5 percent and the LASD arrest rate would be 40.7 percent; among cases involving nonstrangers, the LAPD arrest rate would be 32.9 percent (rather than 14.3%) and the LASD arrest rate would be 46.7 percent (rather than 34.5%). We return to this issue in Section VI.

Our analysis of the descriptive data on case characteristics revealed that these are cases involving relatively young women, most of whom were Latina or African American women who were assaulted by nonstrangers or intimate partners from 6 p.m. to 6 a.m. Most victims were not engaging in any type of risky behavior at the time of the incident, including drinking, using illegal drugs, or walking alone late at night. About half of the victims stated that they suffered collateral injuries during the assault and that they physically and verbally resisted the suspect, but very few reported the crime to the police immediately. About half of the victims had a forensic medical exam. Victims generally were willing to cooperate in the investigation of the case and few recanted their allegations or stated that they did not want to the suspect arrested. Most suspects subdued their victims using bodily force only, about half of the suspects physically, as well as sexually, assaulted their victims, but very few drugged their victims before assaulting them. Some type of physical evidence was recovered in about half of the cases and the investigating officers assigned to the case generally interviewed witnesses (in cases in which

there was at least one witness), interviewed suspects less often, and rarely asked the victim to make a pretext phone call.

**SECTION IV**  
**UNFOUNDING SEXUAL ASSAULT:**  
**FALSE REPORTS BY VICTIMS AND POLICE SUSPICION OF VICTIMS**

Ultimately, the criminal justice system and those writing about the issue of rape have dealt poorly with the issue of false allegations. Given the legal and societal prominence of this subject, it is a failure that should be addressed.

--Philip N.S. Rumney (2006: 158)

In June of 2010, the *Baltimore Sun* reported that the Baltimore Police Department led the country in the percentage of rape cases that were deemed to be false or baseless and thus were unfounded. According to the report, from 2004 through 2009 about a third of the rapes reported to the police department were unfounded, a rate three times the national average. Also in June of 2010, *the New York Times* reported that New York Police Commissioner Raymond W. Kelly had appointed a task force to look into the handling of rape complaints and to recommend new training protocols for dealing with victims of sexual assault. The review was prompted by complaints from rape victims, who said that their allegations of sexual assault were unfounded or downgraded to misdemeanors. These news stories—along with others regarding the mishandling of rape cases in Milwaukee, Cleveland, New Orleans, and Philadelphia—culminated in a September of 2010 U.S. Senate Hearing convened by Senator Arlen Specter to examine the systematic failure to investigate rape on the part of police departments nationwide. Testifying at the hearing was Carol E. Tracey, executive director of the Women’s Law Project, who said, “It’s clear we’re seeing chronic and systemic patterns of police refusing to accept cases for investigation, misclassifying cases to non-criminal categories so that investigations do not occur, and ‘unfounding’ complaints by determining that women are lying about being sexually assaulted.”

Allegations that “women are lying about being sexually assaulted” are not new. In fact, Sir Matthew Hale, an English judge, opined in the seventeenth century that rape “is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho never so innocent” (Hale, 1736, reprinted 1971). Estimates of the number of false reports vary, with one researcher (Kanin, 1994) reporting that 45 of the 109 (41%) rape complaints received by a Midwestern police department were false and another (Theilade & Thomsen, 1986) concluding that the false reporting rate was only 1.5%. A comprehensive review of research examining the prevalence of false reports in the United States, the United Kingdom, Australia, New Zealand and other countries noted that estimates varied from 1.5% to 90% (Rumney, 2006). These variations reflect differences in the way false reports are defined and measured, as well as differences in the reliability and validity of the research designs used to evaluate false reports. According to Lonsway, Archambault, and Lisak (2009: 2), “when more methodologically rigorous research has been conducted, estimates for the percentage of false reports begin to converge around 2-8%.”

The purpose of this section of the final report is to evaluate sexual assault cases that were unfounded by the Los Angeles Police Department (LAPD) in 2008. Using qualitative and quantitative data from redacted police case files and from interviews with LAPD detectives, we determine whether the unfounded cases involved false allegations by victims and, if so, what motivated victims to file false reports. We begin with a review of research on the prevalence of false allegations of rape.

## **PRIOR RESEARCH ON FALSE REPORTS**

One of the most controversial—and least understood—issues in the area of sexual violence is the prevalence of false reports of rape, which Lonsway (2010) referred to as “the

elephant in the middle of the living room” (p. 1356). As mentioned earlier, estimates of the rate of false reports vary widely, with some researchers concluding that the rate is 30 to 40 percent (Jordan, 2004; Kanin, 1994) or higher (see, Rumney, 2006) and others finding that the rate is 2 percent or lower (Kelly, Lovett, & Regan, 2005; Theilade & Thomsen, 1986; Brownmiller, 1975). Noting that those who work in the field of sexual violence are continually asked to comment on the number of reports of rape that are false, Lonsway (2010) stated that recent research findings from studies that use appropriate research designs suggest that the rate of false allegations is low and concluded that “there is simply no way to claim that ‘the statistics are all over the map.’ The statistics are actually now in a very smaller corner of the map” (p. 1358).

Conflicting conclusions regarding the prevalence of false allegations of rape reflect a lack of conceptual clarity, a confounding of police decisions to unfound and false reports, and inappropriate research strategies. Many researchers (Kanin, 1994; Jordan, 2004) either did not explicitly explain how they defined a false rape allegation or used a definition that is inconsistent with policy statements by the Federal Bureau of Investigation (FBI) or the International Association of Chiefs of Police (IACP). For example, FBI guidelines on clearing cases for Uniform Crime Reporting purposes state that a case can be unfounded only if it is “determined through investigation to be false or baseless” (UCR Handbook, 2004: 77). The Handbook also stresses that police are not to unfound a case simply because the complainant refused to prosecute or they are unable to make an arrest. Similarly, the IACP (2005) policy on investigating sexual assault cases states that “the determination that a report of sexual assault is false can be made only if the evidence establishes that no crime was committed or attempted” and that “this determination can be made only after a thorough investigation” (p. 12). Both

sources, in other words, emphasize that the police must conduct an investigation and that their investigation must lead them to a conclusion that a crime did not occur.

A related problem concerns the assumption that rape cases unfounded by the police are, by definition, false allegations. There are two problems with this. First, UCR guidelines state that a case can be unfounded if it is “false *or* baseless” (emphasis added). Although sometimes used interchangeably, these terms—false and baseless—do not mean the same thing. According to Lisak and his colleagues (Lisak, Gardinier, Nicksa, & Cote, 2010) a report is false if “the victim deliberately fabricates an account of being raped”; it is baseless if “the victim reports an incident that, while truthfully recounted, does not meet . . . the legal definition of a sexual assault” (p. 1321). Consider a case in which a complainant, believing that “something happened” while she was passed out at a party, reports a rape to the police but the investigation conducted by the police uncovers no forensic or other evidence that a crime was committed; the victim’s allegation would be baseless, but not deliberately false. The second problem with conflating unfounding with false allegations is that researchers have documented that police unfound sexual assault reports inappropriately; they categorize as unfounded complaints involving complainants who engaged in risky behavior at the time of the incident, complainants who are unwilling to cooperate in the prosecution of the suspect, or complainants who delayed reporting (Kelly et al., 2005; Kerstetter, 1990; Konradi, 2007; McCahill et al., 1979). If a police agency is using unfounding to dispose of problematic—but not false—cases, assuming that unfounded cases are false allegations is obviously misleading.

A third problem plaguing research on false rape reports is that many studies simply rely on the classifications made by law enforcement agencies. That is, they take at face value the conclusion of law enforcement that a complaint is false or baseless and therefore should have

been unfounded. Kanin's (1994) widely cited study, for example, determined that a complaint was a false report based on the police department's classification of the case as a false allegation. Similarly, a British Home Office study (Harris & Grace, 1999) of rape cases reported to the police in England and Wales relied on police classifications of complaints. As Lisak and his colleagues (2010) note, studies that rely on law enforcement categorizations "are unable to determine whether those classifications adhere to IACP and UCR guidelines and whether they are free of the biases that have frequently been identified in police investigation of rape cases" (p. 1322).

Although the prevalence of these definitional and methodological problems calls the findings of much of the extant research on false rape reports into question (Rumney, 2006), there are a number of recent studies that use appropriate research designs and that thus provide more credible estimates of the number of false reports. For example, a British Home Office study (Kelly, 2010; Kelly et al., 2005) of case attrition in rape cases used multiple sources of data to analyze cases that were "no-crimed" (equivalent to unfounding in the United States) by the police. The researchers found that cases in the "no crime" group included both false allegations, which constituted about 8 percent of the rape cases reported to the police, and cases in which there was no evidence of an assault (which included both cases that were reported by a third party and cases involving complainants who had no memory of an assault but reported to the police because they feared that "something" had happened.) In about half of the 120 cases that were designated as false reports, the information provided by the police contained an explanation for why the complaint was deemed to be false—in 53 of the cases the complainant admitted that the allegation was false, in 28 the complainant retracted the allegation, in 3 the complainant refused to cooperate in the investigation, and in 56 the police determined that the complaint was



false based on the lack of evidence (Kelly, 2010: 1349). Cases in which the complainants admitted that the allegations were false were described by the police as cases involving motives of revenge against a current or former partner or a desire to hide consensual sexual activity with other men from a current partner or, in the case of young girls, to avoid confrontations with parents about being sexually active.

Because the authors' review of the case files revealed that policy statements regarding false complaints were not always being followed, they coded the complaints designated by the police as false allegations as either "probable," "possible," or "uncertain." They then excluded the cases that were coded "uncertain" (i.e., cases "where it appeared victim characteristics had been used to impute that they were inherently less believable") and recalculated the rate of false reports to be 3 percent of all cases reported to the police (p. 1350). The authors of the study concluded that "a culture of suspicion remains, accentuated by a tendency to conflate false allegations with retractions and withdrawals, as if in all such cases no sexual assault occurred" (p. 1351).

Similar conclusions were reached by Lisak and his colleagues (2010), who analyzed case summaries of every sexual assault reported to the police department of a major university in the Northeastern United States from 1998 to 2007 (N = 136). The author and three co-investigators used the IACP guidelines to independently determine whether a report was a false report. A complaint was categorized as a false report "if there was evidence that a thorough investigation was pursued and that the investigation yielded evidence that the reported sexual assault had in fact not occurred" (Lisak et al., 2010: 1328).<sup>11</sup> The research team concluded that only 8 of the

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<sup>11</sup> Cases not determined to be false reports were coded as "case did not proceed"—that is, the case did not result in a referral for prosecution or disciplinary action because of insufficient evidence or because the victim did not want to cooperate; "case proceeded"—that is, the report resulted in a referral for prosecution or disciplinary action; or "insufficient information to assign a category."

136 cases (5.9%) were false reports; these 8 cases were also designated as false reports by police investigators. In three of these cases the complainant admitted that the report had been fabricated, in one the complaint provided a partial admission of fabrication and there was other evidence that a crime did not occur, in three the complainant did not admit that the allegation was fabricated but the police investigation produced evidence that the crime did not occur, and in a final case the complainant recanted but evidence that the allegation was fabricated was ambiguous. Lisak and his co-authors (2010) concluded that the results of his study “are consistent with those of other studies that have used similar methodologies to determine the prevalence of false rape reporting” (p. 1329).

## **THE CURRENT STUDY**

The purpose of this study is to add to the limited research on false rape allegations. Although the Kelly et al. (2005) and Lisak et al. (2010) studies help to fill a void in the literature, more research clearly is needed. Neither of these studies, both of which are methodologically superior to much of the extant research, provide definitive answers to questions regarding the prevalence of false rape reports. Kelly and her colleagues examined complaints reported to the police in England and Wales and it is questionable whether their results can be generalized to the United States; moreover, in half of the cases designated as false allegations, the police did not explain why the complaint was deemed to be false. The generalizability of Lisak et al.’s findings (2010) is also called into question, given that they examined rapes reported to a university police department. Another limitation of this study is that the authors did not have access to the complete case files; rather, the police department provided case summaries and the research team

met with officials from the department, who brought the case files with them and who referenced the files if questions arose regarding the appropriate categorization of a case.

In building on and extending the research conducted thus far, our study responds to Rumney's (2006: 155) call for "research that examines how and why police officers determine that particular allegations are false." We examine the case files for a sample of sexual assaults unfounded by the Los Angeles Police Department (LAPD) in 2008 to determine whether the complaints unfounded by the police were false reports. We use the detailed quantitative and qualitative data collected for this study to determine the prevalence of false rape allegations reported to one of the largest law enforcement agencies in the United states, to categorize complainants' motivations for filing false allegations of rape, and to identify the decision making criteria that LAPD detectives use in deciding to unfound a rape complaint.

## RESEARCH DESIGN AND METHODS

**Data.** In this study, we analyze quantitative and qualitative data on 81<sup>12</sup> sexual assault complaints that were unfounded by the Los Angeles Police Department in 2008. These cases are a subset of the cases selected for a larger study of case attrition and case clearance of sexual assaults reported to the LAPD in 2008.<sup>13</sup> For that study, we selected a stratified random sample (N = 401) of sexual assaults involving complainants over the age of 12 that were reported to the LAPD in 2008. Because we wanted to ensure an adequate number of cases from each of the LAPD's 19 divisions,<sup>14</sup> as well as an adequate number of cases from each case clearance

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<sup>12</sup> We eliminated three cases that were reported to the LAPD but were unfounded after it was determined that the crime occurred in another jurisdiction.

<sup>13</sup> We also obtained data on sexual assaults reported to the Los Angeles Sheriff's Department in 2008. However, only 8 of the 543 reports were unfounded. Therefore, we restrict our analysis to cases reported to the Los Angeles Police Department.

<sup>14</sup> Although the LAPD currently has 21 divisions in 4 bureaus, in 2008 there were only 19 divisions.

category (cleared by arrest, cleared by exceptional means, investigation continuing, and unfounded), the sample was stratified by LAPD division and, within each division, by the type of case clearance.<sup>15</sup>

The data for this project were extracted from case files that were provided by the LAPD and from which all information that could be used to identify the complainant, the witnesses, the suspect, or the law enforcement officers investigating the case was redacted. The LAPD provided the researchers with the complete case file for every case in the sample. The case file included the crime report prepared by the patrol officer who responded to the crime and took the initial report from the complainant, all follow-up reports prepared by the detective to whom the case was assigned for investigation, and the detective's reasons for unounding the report. The case files also included either verbatim accounts or summaries of statements made by the complainant, by witnesses (if any), and by the suspect (if the suspect was interviewed); a description of physical evidence recovered from the alleged crime scene, and the results of the forensic medical exam of the victim (if the victim reported the crime within 72 hours of the alleged assault).

We supplement the data from case files with information gleaned from interviews with LAPD detectives who had experience investigating sexual assaults. During June and July of 2010, we interviewed 52 detectives from the LAPD's 21 divisions.<sup>16</sup> During the interview, we asked respondents a series of questions regarding the decision to unfound the report: the standards they use in making this decision, whether complainants have to recant the allegations

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<sup>15</sup> Because the sample is stratified by case closure type, we use a weighted sample in analyses that include the four types of case closures. In this paper, we are only interested in the unfounded cases; therefore, we use the unweighted sample in discussing the characteristics of these cases. We use the weighted sample to calculate the rate of false reports.

<sup>16</sup> The interviews took place at the division to which the officer was assigned. We took detailed notes, but did not record the interviews.

in order to unfound the report, whether certain types of cases have a higher likelihood of being unfounded than others, and whether officers ever unfounded a case for reasons other than a belief that a crime did not occur. Respondents also were asked what would motivate someone to file a false report and how they determined whether the report was false or not.

**Categorizing Cases as False or Baseless.** The objectives of this study are, first, to determine whether sexual assault cases unfounded by the police are false or baseless reports, and, second, for cases determined to be false reports, to identify the factors that motivated victims to file a false report. Following Longsway, Archambault, & Lisak (2009: 4), we define a false report as “a report of a sexual assault that did not happen.” Consistent with both FBI guidelines for clearing cases and with the IACP model policy on investigating sexual assault cases, we categorized a case as a false report only if a thorough investigation led the police to conclude that the *allegation was false* and that no crime occurred. In order to categorize a complaint as a false report, in other words, the case file had to include evidence indicating that the complainant deliberately fabricated the allegation of sexual assault. We categorized as “baseless” cases that were unfounded by the police after an investigation revealed that no crime occurred but there was no evidence that the complainant intentionally lied about the incident.

To determine whether the allegation was a false report, each case file was reviewed by three of the co-authors, who then independently categorized the report as a false report, a baseless report, not a false report, or a case in which it was not clear whether the report was false or not. Within the “false report” category, cases were subdivided into (1) cases in which the complainant recanted and there was evidence to support a conclusion that a crime did not occur and (2) cases in which the complainant did not recant but there was either evidence that the crime did not occur or no evidence that the crime did occur. In many of the cases in which

complainants recanted, the complainant provided an explanation for the false report; the complainant indicated that she had a motive to lie (we discuss these motivations later) or admitted that the sexual contact with the suspect was consensual. Regardless of whether the complainant recanted, we looked for evidence that would support a conclusion that a crime did not occur: witness statements, video evidence, or physical evidence that clearly contradicted the complainant's statement. In one case, for example, the complainant reported that she was abducted from a fast-food restaurant's parking lot, but video surveillance cameras did not record anyone being abducted during the time frame provided by the complainant. In another case, the complainant stated that she called 911 and reported that she had been sexually assaulted, but there was no record of the call. There also were a number of cases in which the complainant had mental health issues, and family members or witnesses stated that she was not being truthful or there was evidence that she made false reports in the past.

The second category of unfounded cases are cases that were determined to be baseless; that is, there was no evidence that a crime occurred but the complainant did not deliberately fabricate the account. Included in this category are cases in which complainants believed that they might have been sexually assaulted when they were under the influence of drugs or alcohol; these cases were unfounded when the forensic medical exam revealed no physical evidence of a sexual assault or witnesses testified that an assault did not occur.

The "not a false report" category was subdivided into (1) cases in which the complainant recanted but there was evidence that her recantation was motivated by fear of retaliation by the suspect, pressure from the suspect or the suspect's family or friends, or lack of interest in proceeding with the case, and (2) cases in which the complainant did not recant, there was evidence that the crime did occur but that prosecution would be unlikely because of the

complainant's behavior at the time of the incident, the complainant's lack of cooperation, lack of corroboration of or inconsistencies in the complainant's statement, *and* these factors were noted by the investigating officer as reasons for unfounding. The cases that fell into the "not clear whether the report was false or not" category included cases which the LAPD should have investigated further before making a decision regarding case clearance, and cases which the researchers could not categorize. After independently categorizing the cases, the researchers met to review their decisions and to discuss in more detail the few cases (N = 8) in which there was disagreement about the way the case should be categorized. The inter-rater reliability for these 81 cases was 90.1%.

We want to emphasize that we did not assume that complainants who recanted their testimony or retracted their allegations had filed a false report. We assumed, like Raphael (2008), that "just because the victim recants does not mean that the abuse did not happen" (p. 371). A case in which the complainant recanted was categorized as a false report only if there was independent evidence that a crime did not occur and there was no indication in the case file that the complainant's recantation was motivated by fear, pressure, or a belief that prosecution would not be in her best interest.

## **FINDINGS**

**Unfounding and False Reports.** As shown in Table IV.1, we categorized two-thirds (67.9%) of the unfounded cases as false or baseless reports, either because the complainant recanted and there was evidence that a crime did not occur (N= 31; 38.3%) or because there was evidence that the crime did not occur or no evidence that the crime did occur, even through the complainant did not recant (N =24; 29.6%). Five cases were determined to be baseless, but not false. Only 10 cases (12.3%) were deemed not to be false reports; eight of these were cases in

which the complainant recanted but there was evidence that her recantation was motivated by fear, pressure, or a lack of interest in moving forward with the case, and only two were cases in which the complainant did not recant and there was evidence that a crime did, in fact, occur. We were unable to categorize the remaining 11 (13.6%) cases as false reports or not; most of these (N = 8) were cases where the research team ascertained that the LAPD should have investigated further prior to making a decision regarding the appropriate case closure.

Table VI.1. Cases Unfounded by the LAPD (N = 81)—False Reports or Not?

	N	%
<b>False Report</b>	<b>55</b>	<b>67.9</b>
<i>Victim recanted and evidence that crime did not occur</i>	<i>(31)</i>	<i>(38.3)</i>
<i>Victim did not recant but evidence that crime did not occur or no evidence that crime did occur</i>	<i>(24)</i>	<i>(29.6)</i>
<b>Baseless Report</b>	<b>5</b>	<b>6.2</b>
<i>Case unfounded because it was baseless but not fabricated</i>		
<b>Not a False/Baseless Report</b>	<b>10</b>	<b>12.3</b>
<i>Victim recanted but evidence that recantation motivated by fear, pressure, or lack of interest in continuing with case</i>	<i>(8)</i>	<i>(9.9)</i>
<i>Victim did not recant and evidence that crime did occur</i>	<i>(2)</i>	<i>(24.4)</i>
<b>Unclear Whether Report False/Baseless or Not</b>	<b>11</b>	<b>13.6</b>
<i>LAPD should have investigated further before closing case</i>	<i>(8)</i>	<i>(9.9)</i>
<i>Unable to categorize</i>	<i>(3)</i>	<i>(3.7)</i>

One conclusion that can be drawn from these data is that the LAPD is clearing sexual assault cases as unfounded appropriately most, but not all, of the time. Stated another way, three-quarters (74.1%) of the cases that were cleared as unfounded were cases in which there was evidence that a crime did not occur and that the complainants, for various reasons, either filed false reports of sexual assault or sexual battery (false allegations) or reported a rape because they believed that they had been assaulted while under the influence of drugs or alcohol (baseless complaints). Although there were some cases that appeared to require additional investigation before clearing, there were only 10 cases where we concluded that a crime did occur and



therefore the case should not have been unfounded. These data also reveal that recantation of the complainant is not required to unfound the case. Of the 81 cases that were unfounded, only 45 (55.6%) were cases in which the complainant recanted.

Because the 81 unfounded cases are not a random sample of all cases reported to the LAPD in 2008, we cannot use the unweighted data to determine the proportion of all 2008 reports that were false reports. To determine this, we used data that were weighted by the proportion of cases from each division and, within each division, the proportion of cases from each case closure type.<sup>17</sup> Using these data, 4.5 percent of all cases reported to the LAPD in 2008 were false reports; 2.2 percent were cases in which the complainant recanted and there was evidence that a crime did not occur and 2.3 percent were cases in which the complainant did not recant but there was evidence that a crime did not occur. This is consistent with Lonsway, et al.'s (2009: 2) conclusion that although one cannot know with any degree of certainty how many sexual assault reports are false, “estimates narrow to the range of 2-8% when they are based on more rigorous research of case classifications using specific criteria and incorporating various protections of the reliability and validity of the research.”

In the sections that follow, we provide qualitative data to illustrate the types of cases in each category. We begin by highlighting the characteristics of the cases that were deemed to be false reports, followed by a description of one of the cases categorized as baseless. This is followed by a discussion of the cases that were categorized as not false reports and the cases that

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<sup>17</sup>For each case closure type in each division, we determined (using LAPD data on all sexual assault cases reported in 2008) the percentage of the stratum (i.e., the percentage of each case closure type in each division) in the population. We then divided the percentage of the stratum in the population by the percentage of the stratum in the sample. Each case in each stratum was multiplied by the proportional weight; groups that had been over-sampled had a proportional weight that was less than 1 and groups that had been under-sampled had a proportional weight of more than 1.

the researchers concluded the LAPD should have investigated further before clearing the case.

We conclude with a discussion of the motives of complainants who filed false reports.

## **UNFOUNDED CASES THAT WERE FALSE OR BASELESS**

**Unfounded Cases that Were False Reports.** Descriptive statistics on the 55 unfounded cases deemed to be false reports are presented in Table IV.2. In all but 10 of these cases, the complainant reported that she had been raped; only 5 cases involved attempted rape and only 5 were reports of sexual battery (i.e., fondling or touching the complainant). In most cases the complainant did not report that the suspect used a gun or knife but in one fourth of the cases the complainant stated that she had been attacked by more than one suspect and in a third of the cases the complainant stated that she had been injured during the assault. Half (49.1%) of the allegations involved suspects who were strangers to the complainant. We used these characteristics to determine the number of false reports that were allegations of *aggravated rape*; that is, allegations of rape in which the victim claimed that she was attacked by a stranger, the suspect used a gun or knife, she was attacked by more than one suspect, or she suffered collateral injuries in the attack (for a discussion of the concept of aggravated rape, see Estrich, 1987; Kalven and Zeisel, 1966). We found that more than three quarters (78.2%) of the false reports involved allegations of aggravated rape. This suggests that complainants who file false reports believe that their accounts will be more credible if they conform to the stereotype of a “real rape.”

Table IV.2. Descriptive Statistics: Cases Categorized as False Reports (N = 55)

	N	%
<b>Characteristics of Incident/Case</b>		
Type of crime		
Rape	45	81.8
Attempted rape	5	9.1
Sexual battery	5	9.1
Suspect used a gun or knife (% yes)	9	16.4
Number of suspects		
One	41	74.5
More than one	14	25.5
Complainant injured in some way (% yes)	18	32.7
Relationship between complainant and suspect		
Strangers	27	49.1
Nonstrangers	20	36.4
Intimate partners	8	14.5
Aggravated rape <sup>a</sup> complaint (% yes)	43	78.2
Suspect's initial contact with complainant		
Immediate attack	16	30.8
Offered complainant a ride or forced complainant into vehicle	10	19.3
Attack while complainant passed out or asleep	5	9.6
On a date or at a party	4	7.7
Offered money or drugs to complainant	4	7.7
Propositioned complainant for sex	3	5.8
Complainant reported the crime within one hour (% yes)	14	25.5
Complainant verbally and physically resisted the suspect (% yes)	21	38.2
Complainant had a forensic medical exam (% yes)	27	49.1
Complainant recanted the allegations (% yes)	31	56.4
<b>Complainant Characteristics</b>		
Complainant has mental health issues (% yes)	20	36.4
Complainant is younger than 18 (% yes)	12	21.8

<sup>a</sup> An aggravated rape complaint is an allegation of forcible rape that involved a suspect who used a gun or a knife, more than one suspect, or collateral injury to the victim (see Estrich, 1987).

There was little consistency in complainants' accounts of the suspects' initial contact with them: in 16 cases it was described as an immediate attack and in 10 the complainant stated that she was offered a ride or forced into a vehicle. Other complainants stated that they were attacked while asleep or passed out, that they encountered the suspect on a date or at a party, or that the suspect approached them by offering money or drugs or by propositioning them for sex. Most complainants did not report the crime within one hour, but 38.2 percent indicated that they resisted the suspect both verbally and physically. About half of the complainants underwent a forensic medical exam and more than half eventually recanted the allegations. Twenty of the 55 complainants (38.6%) had mental health issues and only 12 were under the age of 18.

Although these descriptive statistics provide an overview of the types of false reports handled by the LAPD, a more detailed picture can be painted using the qualitative data from the cases files. In one case, for example, the complainant told the police that she was walking alone at 2:30 in the afternoon when a white van pulled up alongside her and the driver asked her if she needed a ride. She said that she did and got in the vehicle. The suspect then parked the van under a freeway overpass. According to the complainant,

The suspect kissed her on the mouth and she asked him, 'What are you doing?' The suspect stated, 'I think you're pretty,' and kissed her again. The suspect then locked the doors of the van and stated 'let's stay here a while.' She replied, 'I need to go home.' The suspect then reached into her clothing and touched her vagina with his hands. The suspect told her to remove her underwear. She said, 'No, this has gone far enough.' The suspect then brandished a knife and said, 'bad things will happen if you don't cooperate. Pull your underwear down.' Thinking that she did not have a choice, she cooperated. The suspect pulled his pants down and penetrated her vagina with his penis. She was unsure if the suspect ejaculated. The suspect asked her where she lived and drove her to her residence, which took 25 minutes.

The complainant subsequently told her therapist that she had been sexually assaulted and her therapist insisted that she report the crime to the police. The investigating officer took the complainant to the alleged crime scene, pointed out the camera that was located there, and told

her that they would be able to get the suspect's license plate number from the video footage. At this point, the complainant admitted that the incident was fabricated. She told the officer that she "sometimes initiates sexual liaisons with older men when she is depressed and that was the case in this incident." She said that all of the sex acts were consensual, that no force or weapon was used, and that she reported the incident to her therapist to garner sympathy.

In this case, the complainant retracted her allegations of sexual assault when it became clear that the police would be able to identify the suspect's car using video footage from the alleged scene of the crime. The complainant told the police that the suspect was a stranger and stated that she did not know his name or where he lived, but apparently realized that the consensual nature of her encounter with the suspect would be revealed if the police contacted the suspect.

As noted above, just over half of the cases labeled as false reports involved complainants, like the one in the previous case, who recanted their allegations. In the next case, the complainant did not recant but there was no evidence that a crime occurred. The complainant, who is homeless, stated that she was sleeping in her car, a Honda Civic, and at some point during the night she woke up with two naked men in the car with her. She said that they drugged her with the "date rape drug" and that both suspects then penetrated her with their penises. She also said that this has happened several times before with the same suspects, but she did not report those incidents. She indicated that she did not know their names or where they lived, but that she could identify them if she saw them again. The forensic medical exam did not reveal any findings consistent with the complainant's account of forced sexual intercourse.

In the explanation for why this case was unfounded, the investigating officer wrote:

Based on the totality of the circumstances in this case, including a lack of medical evidence, victim's lack of memory, victim's claim of prior unreported incidents with the

same suspects, the physical challenge of a 6'2" and a 5'11" suspect assaulting the victim in a Honda Civic, the victim's unresponsiveness to contact efforts, and a total lack of any evidence to corroborate the victim's unsupported allegation, there is no corpus of a crime and this report is unfounded.

We categorized this case as a false report based on the implausibility of the complainant's assertion that she was sexually assaulted by two tall naked men in a small compact car, the lack of any forensic or physical evidence to support her allegations of being drugged or sexually assaulted, and the fact that she alleged that the same thing had happened several times in the past.

**Unfounded Cases that Were Baseless.** Our review of the case files revealed only five unfounded cases that were baseless—that is, these cases did not involve deliberate fabrications by the complainant. Rather, the complainants in these cases believed that they had been sexually assaulted or that “something” had happened to them. One complainant stated that she was raped while under the influence of drugs at a rave concert, a second reported that she was sexually assaulted after she and a friend left a club with two men who offered to drive them home but who instead took them to an apartment and plied them with drinks, and the third claimed that someone at the drug rehabilitation facility where she was staying raped her while she was sleeping. In the other two cases, the complainants were developmentally delayed and did not appear to understand the concept of rape.

In the first case, the 18-year-old complainant stated that she smoked marijuana and took two ecstasy pills while attending a rave concert. She said that while she was on the dance floor, a man walked up to her, sprayed her in the eyes with some type of liquid, and said, “I had a mask on, so she doesn't know it was me.” She said that people were staring at her and stated, “I felt weird. I think someone did something to me. I think that someone raped me.” She said that she did not remember having sexual intercourse with anyone, but thought that she might have

blacked out. She told her friend, who was with her at the concert and who told the investigating officer that she was “100% positive that XXXX was not sexually assaulted at any time while we were at the rave,” that she decided to report the crime to the police “just to be on the safe side.” Because the complainant believed that she might have been sexually assaulted and did not intentionally fabricate the assault, we categorized the case as baseless rather than false. The other four cases categorized as baseless were very similar.

### **UNFOUNDED CASES THAT WERE NOT FALSE REPORTS**

As noted above, most of the 10 cases that we determined were not false/baseless reports were cases in which the complainant recanted but it was clear that the complainant’s recantation was motivated by fear of reprisal from the suspect, pressure from the suspect or his family or friends, or the complainant’s lack of interest in pursuing prosecution of the suspect. For instance, one case involved an allegation of sexual assault against a physician; the complainant retracted the allegation but the investigating officer noted in the follow-up report that she did so only after being told that the suspect would go to jail if he was identified and prosecuted. In another case, the complainant told the investigating officer that the suspect, a friend from school, threatened her with a knife and after sexually assaulting her said, “you better not tell anyone ‘cause my homies will get you and I know where you stay.” Although the complainant did eventually recant and told the police that no one had threatened her or coerced her to change her story, we categorized this case as “not a false report” based on the fact that the complainant gave a very clear account of the incident, used the same words to describe the incident to the patrol officer and the investigating officer, and appeared to be concerned that the suspect would get in trouble. Moreover, the investigating officer presented the case to the district attorney for a pre-

arrest filing decision, which suggests that the officer may have believed that the victim had been assaulted. A third case in this category involved a complainant and suspect who had been married for seven years. The suspect accused the complainant of cheating on him, punched her in the face, and left the house; the rape occurred when he returned home the next morning after being out all night drinking. The complainant recanted the allegations of physical and sexual assault, despite the fact that she had a black eye and bruises on her arms, and one of her children told the officer that the victim's injuries "came from the beating she got." The complainant stated that she fell over an unknown object in the house and that her husband did not hit her or force her to have sex with him. In this case, it was clear that the complainant either was afraid of the suspect or had reconciled with him.

One of the more troubling cases that we categorized as not a false report involved a complainant who stated that she was assaulted by a man she had been dating for three months; the forensic medical exam revealed tissue damage to the complainant's rectum that was consistent with her allegation of forced anal intercourse and an eyewitness identified the complainant's boyfriend as the person who physically and sexually assaulted her. Notwithstanding this evidence, the complainant eventually recanted her testimony and identified another man as the person who assaulted her.

The victim was at home with her young son when the suspect, whom she had been dating for three months, arrived. She let him in, they began to argue, and their arguing woke the baby. The suspect then bit the baby five times in the face, stomach and legs, hit the victim on the head and demanded that she make breakfast for him. The suspect became upset with the victim, pushed her out of the kitchen and made his own breakfast. After he finished eating, the suspect pushed the victim on the bed and demanded sex. The victim attempted to push him away, but he said, 'Bitch, you don't got no choice. The victim told the suspect that she would call the police if he forced himself on her; he replied, 'If I go to jail, I'll get someone to kill you.'" The suspect choked the victim until she was close to passing out and raped her. The suspect then went to sleep; the victim stated that she did not call the police because she was afraid of the suspect and his threat that he would have someone kill her if she did. When one of the victim's friends arrived at her house, she



told her that the suspect had beaten her, but she did not tell her about the rape. The suspect woke up, demanded that the witness leave, and when she would not, threw the TV on the floor, smashing it. The suspect then kicked a hole in the wall and left the apartment. The victim locked the door and called the police.

At the police station, the victim named another man as the suspect and picked his picture out of the photo line-up. The witness, however, stated that the suspect was not in the photo line-up. She said that the man who raped the victim was her (the victim's) boyfriend, AR, who was a member of the street gang 'Rollin 60's' in South Los Angeles.

Four days later, the victim came to the police station and said that she fabricated the incident. She said that her boyfriend kicked a hole in the wall and she could not get the apartment manager to repair the damage unless she had a police report. When the investigating officer asked the victim how the baby received the bite marks that she claimed in her initial report were inflicted by the suspect, she said that she always bites her son in play and that she was the one who bit her baby.

We categorized this case as "not a false report" for several reasons, the most important of which was the fact that there was corroboration of the complainant's allegation of sexual assault: the forensic medical exam provided physical evidence consistent with the complainant's allegation of forced anal intercourse; the complainant made a fresh complaint to the witness, who identified the suspect as the person who assaulted the complainant; and the baby had bite marks consistent with the complainant's testimony regarding the suspect's behavior. The fact that the suspect was a known gang member and that he hit the complainant and threatened to kill her if she told the police that he sexually assaulted her suggests that the complainant's recantation was motivated by fear of the suspect. This is confirmed by the fact that the complainant told the police that she did not call them when the suspect fell asleep because she was afraid of him and by the fact that the complainant's assertion that "she always bites her son in play" is not credible.

Another case in which the complainant recanted but there was evidence that a crime did occur involved a young woman who claimed that she was sitting at a bus stop at 10:30 p.m. when she observed a Hispanic male exit a bus that had stopped near where she was sitting. According to the complainant's report:

The suspect began walking in her direction and whistled to get her attention. The victim ignored the suspect but he came up to her, sat down next to her, and asked her ‘how much?’ When the victim attempted to stand up, the suspect grabbed her, forced her to sit down, pulled an orange boxcutter out of his pocket, opened the blade, and grabbed the victim by the hair. The victim attempted to scream, but the suspect held the boxcutter to her throat and said that if she screamed he would kill her. He then pulled the victim to an empty lot near the train tracks and raped her. The suspect then walked away and the victim walked home and took a shower. The next day she made a police report. She said that she delayed reporting because she was afraid of retaliation from the suspect.

The investigating officer talked to the victim’s mother, who expressed doubt that the incident had happened. She said that her daughter is a habitual liar and that she (mother) did not become aware of the incident until two weeks after it allegedly happened. She said that she talked to the victim on the phone and the victim told her she was on her way to the doctor to find out if she was pregnant but did not want to talk about it with her mother. She would only say that she had been raped by ‘a Latino man with a boxcutter.’ When the investigating officer talked to the victim, the victim became upset and said that she did not want to talk about the incident because it brought back bad memories. When the officer persisted she said, ‘If I say nothing happened will you leave me alone?’

Although the mother’s belief that the incident was fabricated might have led us to categorize the case as a false report, the investigating officer noted in his report that s/he had information about a similar attack in the same part of the city—in that case, the suspect used the same MO and was arrested for attempted kidnapping. The investigating officer prepared a photo line-up that included the picture of this suspect and explained to the complainant that there was a similar incident involving another complainant and that the LAPD wanted to determine if the same suspect attacked her. When the officer began reading the photographic line-up admonition to the complainant, she became upset and asked, “Why am I going to look at pictures if I told you nothing happened?” The complainant then got up and left the police station. The officer stated in the report, “Based on the victim’s statements and her *refusal to cooperate*, this report will be unfounded.”

The fact that the police had information about a similar incident involving a different complainant, coupled with the fact that the complainant reported the incident within a day of its occurrence and seemed to have second thoughts about pursuing the case, calls into question the

conclusion that a crime did not occur. It appears that the complainant wanted to put the incident behind her and was not willing to cooperate in the police investigation, and that this led the police to unfind the report.

In contrast to these two cases in which the complainant recanted her testimony, in a third case categorized as not a false report the complainant did not recant. This case involved two 18-year-old friends who attended a concert at the Staples Center. After the concert, they were approached by three Latinos, who offered them a ride home. They agreed but instead of taking them home, the suspects drove to a liquor store to buy alcoholic beverages and then drove the complainants to a home in the valley. The suspects offered the women drinks, as well as cocaine and marijuana, and both initially refused. Eventually the complainant accepted a drink; she stated that she became intoxicated after drinking half of the drink and does not remember everything that happened after she accepted the drinks from one of the suspects. She told the officer that

she went into the bathroom (which was attached to one of the bedrooms) and when she emerged she was surprised to find the suspect in the bedroom. She stated that the suspect grabbed her waist and turned her around. He then began to kiss her. He pulled her pants down as he then pushed her onto the bed. She stated that she was scared and was unable to do anything except cry. She was pushed onto her stomach by the suspect, who then commenced penile-vaginal penetration. At some point, she heard the door open. She was still crying. She observed suspect-2 enter the bedroom. She advised that she was now 'blacking out.' She remembers a penis in front of her face and someone's hands attempting to push the penis in her mouth. As the unknown suspect attempted to force oral copulation, the victim pushed away, forcing the suspect that was penetrating to stop. As she sat up, she noticed that suspect-1 and suspect-2 were in the room. Suspect-1 then asked, "why are you crying?" She observed them become nervous and rush out of the room.

All of the facts in the case were confirmed by the witness (the complainant's friend), who did not drink the alcoholic beverages offered to her. She reported that the complainant was crying when she exited the bedroom and that the suspects hurriedly left the location. The two women called a

friend to pick them up and on the way home the complainant told the witness that she had been raped by suspect-1 and possibly by suspect-2. The complainant told the same story to the nurse during the forensic medical exam.

The complainant and the witness reported the crime to the police and the police arrested the two suspects and charged the first suspect with rape and the second with indecent exposure. The case file notes that suspect-1 had a prior arrest for domestic battery and that suspect-2 had previous arrests for disturbing the peace, burglary, carrying a concealed weapon, and driving under the influence. Male DNA recovered from the complainant during the forensic medical exam matched DNA taken from the suspect. The district attorney reviewing the case refused to file charges, on the ground that there was no corroborating evidence and that the complainant consented.

The day before the investigating officer presented the case to the district attorney, s/he re-interviewed the complainant, who told the officer that she was very confused by the incident and that she now blamed herself “for letting it go too far.” She changed her story, saying that the suspect did not use force as she originally said. She said that when she started crying loudly and told the suspects to stop, they stopped. According to the officer, “After subsequent reflection (sic) on the incident, she decided that neither of the 2 suspects had crossed the line and committed a crime against her.” After the district attorney rejected the charges, the investigating officer presented a summary of the case to his/her supervisor. The supervisor then concluded that the complainant recanted her testimony and changed the case clearance from cleared by arrest to unfounded.

This case is unusual, in that the report was unfounded *after* the suspects were arrested and charged by the police. Clearly, the investigating officer initially believed that a crime occurred.

The complainant and the witness, who were interviewed separately, gave nearly identical testimony about the incident and DNA that matched suspect-1 was recovered from the complainant. Moreover, the investigating officer presented the case to the district attorney for a filing decision the day after the complainant, during the second interview, changed her story. The unfounding decision appears to be based on a belief that the complainant would not cooperate in the prosecution of the suspects rather than a belief that a crime did not occur.

### **UNFOUNDED CASES THAT SHOULD HAVE BEEN INVESTIGATED FURTHER**

There were 8 cases that the research team believed should have been investigated further. We believed that the evidence in these cases was ambiguous and that the investigating officer should have continued the investigation until these ambiguities could be clarified. Although a number of these cases involved complainants who were under the influence of alcohol or drugs at the time of the alleged assault, most also involved witnesses who might have been able to corroborate the complainant's allegations but who were never interviewed. Several of the cases involved complainants whose allegations appeared credible, but who either could not be located or decided that they did not want to proceed with the case. There were no identified suspects in any of these eight cases. Considered together, these case characteristics suggest that the complaints were unfounded because the officers investigating them believed that a suspect was not likely to be identified and arrested and that the complainant was not likely to cooperate even if a suspect was identified. Unfounding was used as a way to clear—or dispose of—these problematic cases.

## **MOTIVATIONS FOR FILING FALSE REPORTS**

The findings discussed thus far suggest that most, but not all, of the cases unfounded by the LAPD were either false or baseless. To further illuminate the nature of the false reports, we read through each case file to identify the factors that motivated complainants to make false allegations. The procedures we used to identify complainants' motivations for making false reports were similar to those used to determine whether the unfounded cases were false reports. Two members of the research team read through the case files to identify possible motives and then independently categorized each case. Based on the typologies discussed in Kanin (1994) and Kelly et al. (2005), we began with three motivations for filing a false complaint. The first, which we label "avoiding trouble/alibi," involved either (1) young girls who fabricated a sexual assault to avoid the consequences of missing curfew, drinking or using drugs, or engaging in consensual sex, or (2) older teens and adult women who made up a sexual assault to cover up consensual sexual activity with someone other than a current partner. The second motivation is labeled "anger/revenge." Included in this category are cases in which the complainant used a false allegation of sexual assault to retaliate against a current or former partner, typically after the partner broke up with or cheated on the complainant. The third motivation, which we label "attention seeking," involves complainants who fabricated a sexual assault to gain attention or sympathy from family and friends, as well as those who invented an assault in order to get medical treatment and/or medication. As we reviewed the case files, we identified two additional motivations, which we labeled "mental health issues" and "guilt/remorse." Many complainants, particularly those who did not recant, had mental health issues (e.g., schizophrenia) that made it difficult for them to separate fact from fantasy. Included in the "guilt/remorse" category are complainants who engaged in consensual intercourse, but claimed

that they had been sexually assaulted by their consensual partners as a result of guilt or remorse regarding their behavior. As we discuss in more detail later, many of the complaints deemed to be false reports involved overlapping motivations—for example, complainants with mental health issues who fabricated a rape as a means of garnering attention or because of remorse over consensual sexual intercourse or young girls who made up a rape both to avoid trouble with their parents/guardians and to draw attention to themselves.

As Table IV.3 shows, we were able to categorize all but five of the false reports according to at least one motive; whereas 22 complainants had only one discernable motive, 28 had two or more motives. Twenty-two cases were categorized as “avoiding trouble/alibi;” there were 13 cases in which the complainant fabricated the sexual assault to avoid trouble of some type and 9 cases involving complainants who made up a sexual assault to cover up the fact that they had cheated on their partners. There were 13 cases in which the complainant made up a rape allegation to retaliate against a partner, family member, or friends, and 23 involving complainants who filed false rape reports to garner attention or sympathy from family and friends or because they needed medical treatment or access to medication. In seven cases the false allegation of rape was motivated by the complainant’s guilt or remorse as a result of engaging in consensual sex. Finally, a total of 18 cases involved complainants with mental health issues; many of the complainants in these cases had multiple motivations. Below we provide descriptions of each category and examples of the types of cases that each includes.

Table IV.3. Motivations for Filing False Reports<sup>a</sup>

	N	%
<b>Provide an Alibi or Avoid Trouble</b>	<b>22</b>	<b>40.0</b>
Victim missed curfew or was breaking the law	(13)	(23.6)
Victim was unfaithful to partner	(9)	(16.4)
<b>Anger or Revenge</b>	<b>13</b>	<b>23.6</b>
<b>Attention or Sympathy</b>	<b>23</b>	<b>41.8</b>
Medical	(6)	(10.9)
Personal	(17)	(30.9)
<b>Mental Illness</b>	<b>18</b>	<b>32.7</b>
<b>Regret/Guilt</b>	<b>7</b>	<b>12.7</b>
<b>Victim Never Alleged Rape</b>	<b>2</b>	<b>3.6</b>
<b>Unable to Classify</b>	<b>5</b>	<b>9.1</b>
<b>Multiple Motives</b>	<b>28</b>	<b>50.1</b>

<sup>a</sup>Motivations are not mutually exclusive.

**Avoiding Trouble – Providing an Alibi.** Many of the false reports in the “avoiding trouble/alibi” category involved adolescent complainants who missed curfew or skipped school and then claimed that they had been abducted (often from a bus stop) and sexually assaulted so as to avoid a confrontation with parents or guardians over their behavior. For example, one case involved a complainant who told the police that she was waiting for a bus at 11:30 at night when an unknown male drove up and asked her if she needed a ride. According to the complainant,

She said yes and got into the suspect’s vehicle. She told the suspect where she needed to go, but he went the wrong way. They then stopped at a house and the suspect asked the victim to come in with him, stating “come on, I am going to turn you into a woman.” He then attempted to kiss her and to pull down her pants. She bit him on the face, got out of his vehicle and fled on foot. She said that the suspect did not pursue her.

We categorized this case as motivated by the complainant’s desire to avoid trouble because the complainant, when confronted by the investigating officer regarding her honesty, recanted and stated “*she lied about being raped because she was too afraid to say that she was with her boyfriend, which led her to miss her curfew.*” In addition, the complainant’s vague description of the suspect, inability to identify the location where the incident occurred, and



statement that she escaped by biting the suspect in the face are all “red flags” that cast doubt on the truthfulness of this report (see McDowell & Hibler, 1987 for description of red flags).

There were nine cases in which the complainant was cheating on her partner and attempted to cover up her indiscretion by either accusing the new partner of rape or claiming that she was sexually assaulted by an unknown suspect. For example, one case involved a complainant who had been engaging in an on-going extramarital relationship with a coworker. The complainant claimed that the suspect raped her twice and took pictures of her to blackmail her if she told anyone. She said that after the second assault she told her husband what had happened. Three days later, the complainant, who had a black eye and a swollen lip, reported the assault to the police. During the investigation of the case, the complainant changed her story repeatedly, saying first that her relationship with the suspect was platonic but then admitting—after being told that the suspect’s neighbor reported that the complainant was seen repeatedly at the suspect’s residence—that she had consensual sex with him on several occasions after the initial assault. She also admitted that her husband was responsible for her black eye and other injuries. The investigating officer interviewed the suspect, who stated that he had consensual sexual intercourse with the complainant on numerous occasions and denied raping her in his car or his house.

During a follow-up interview, the investigating officer confronted the complainant with the inconsistencies in her story. He wrote, “At this point, I told her I didn’t believe she had been raped. I told her that I was going to present the case to the city attorney to see if he was interested in filing charges against her. XXX and I took a short break to discuss whether we were going to arrest her.” When they resumed the interview, the complainant admitted that the sexual activity with the suspect was consensual. She recanted the rape allegations, told the investigating officer

that she filed the false report so that her husband would not find out about the extramarital affair, and apologized for lying, saying “I didn’t mean to cause so much trouble and I regret that I did.”

**The Angry Complainant Seeking Revenge.** Fourteen of the false reports involved complainants motivated by anger and a desire to seek revenge against partners, ex-partners, friends, or family members. Some cases involved complainants with mental health issues who were angry at family or hospital staff for forcing them to take medication. An example of this motivation is a woman diagnosed as bipolar who refused to take her medication. When her parents insisted that she take the medication, she became upset, threw items around the house, and physically assaulted her father. She then claimed her father raped her while her mother watched. Her mental illness, coupled with the fact that her mother witnessed her outburst, led the investigating officer to unfind the report.

Other cases in this category involved the so-called “woman scorned.” These were complainants who were angry after a fight with a partner or after a partner broke up with them and who claimed that they were sexually assaulted as a way to retaliate. One such case involved a woman who met the alleged suspect on a dating website and delayed reporting for two months.

The victim said that she met the suspect on the internet and arranged to meet him at Denny’s. She states that she met him and that she left with him and that they went to a motel, where he penetrated her vagina with his finger and raped her. She said that she has called the suspect several times since the incident but he refused to speak to her; one time he did speak with her but called her a prostitute. During the follow-up interview with the investigating officer, it came out that the victim had met the suspect on prior occasions; this was not the first time they had met.

When interviewed without her father in the room, the victim started to cry and said, ‘I didn’t know he would get arrested, and I had a plan to die.’ When the officer asked whether the suspect hurt her, she stated, ‘No, he just made love to me and dumped me.’ When asked why she made these allegations against the suspect, the victim stated that ‘she felt sad since he had just dumped her after making love to him.’ *When the investigating officer re-interviewed the victim, she admitted having sexual intercourse*

*with the suspect but stated that it was consensual and that he had not forced her. She said that she lied because the suspect has not called her since their meeting.*

In this example, the complainant admitted that she fabricated the rape and indicated that she did so because she was upset that the suspect did not want to have further contact with her. The investigating officer interviewed the suspect, who stated that he did not go to the meeting with the victim because her online profile did not match her real appearance. Regardless of whether the suspect met the complainant, the fact that he discontinued contact with her made her angry and led her to make up the rape allegation.

**Attention Seeking.** Cases in the “attention seeking” category involved both cases in which the complainant filed a false report to get medical attention and/or medication and cases in which the complainant used the rape allegation to garner attention or sympathy. Only six cases were primarily motivated by a desire to seek medical attention or a need for medication. Some complainants fabricated rapes because they needed, but could not afford, some type of medication or because they wanted to be admitted to a psychiatric facility. Other complainants filed false rape reports to obtain pregnancy tests or general physical exams. One such case involved a young female who had missed curfew and was sexually active. She stated that she was sexually assaulted by three unknown males and feared she was pregnant. Although the complainant provided detailed descriptions of the suspects, the location of the alleged incident was a major thoroughfare and no witnesses were present. When questioned by the investigating officer about the truthfulness of her statements, she recanted and stated that she had engaged in consensual sexual intercourse and feared that she was pregnant or had a sexually transmitted disease. Her statement provided a clear motive for fabricating the rape, as she told the investigating officer that she feared her mother would find out about her consensual relationships and would be upset if she was pregnant.

As previously stated, many of the complainants who filed false rape allegations because they needed medical treatment or medication also had documented mental health issues. For example, in one case a distraught woman was found by police near a payphone.

The victim was threatening to commit suicide and said that she had been held against her will and forced to have sex all night. She said that she and an unknown black male had been smoking crack cocaine in his vehicle. Sometime during the night, the suspect verbally threatened the victim and demanded oral copulation. The victim, fearing for her safety, complied. She would not provide any additional info or explain how she ended up near the payphone. The victim later stated that she was not sexually assaulted and only reported that she was because she had run out of psych meds and wanted to be placed on a 5150 hold so that she could get access to psych meds.

The vagueness of the complainant's description of the suspect and the location of the incident, combined with her inability to answer the investigating officer's questions led the researchers to conclude that this was a false report. The complainant also recanted her statement, providing the rationale for filing the report as the desire to gain access to medication for her mental illness. The case file also notes that the complainant is homeless, which likely influenced her inability to obtain treatment for her mental illness.

One of the most common motivations for filing a false report was a desire for attention or sympathy from family, therapists, or the police. Many of these cases involved complainants who had histories of making false reports, were described as known liars by family or friends, or explicitly stated they liked the attention they received as a result of reporting the rape. Several cases also included complainants with mental health issues, in which the desire for attention may have been due to symptoms of their illness. These cases will be reported in more detail in the section that follows. For now we focus on those cases in which complainants without documented mental health issues were seeking attention. In the first case, the teenage complainant appears to have fabricated the rape to avoid trouble due to missing her curfew.

The victim stated that she was kidnapped by two Hispanic men driving a grey car as she waited for a bus (was going to a friend's house) at 10:30 in the morning. She cannot remember anything else until 10 p.m. that night, when they pushed her out of the vehicle at the same location where they kidnapped her. The victim was angry that her mother called police and said that she cannot remember anything during the 12-hours that she was with them. She refused medical treatment.

When questioned by the investigating officer about the inconsistencies in her story and the fact that it was highly unlikely she would not remember what happened during a twelve-hour time span, the complainant recanted. The complainant stated that she spent most of the day at the beach alone and returned home late because of traveling by bus. She then stated that "*after telling her mother and sisters that she was kidnapped, they expressed great concern and gave her more attention*" and that "*the attention made her feel good.*" Although the complainant may not have initially sought out attention when she left her home that morning, the attention expressed by her family acted as reinforcement for the lie she told.

**Guilt/Remorse.** Cases falling under "guilt/remorse" category include those in which the complainant engaged in consensual sexual intercourse and later felt guilt or regret about her behavior. Some of these cases involved complainants who had been drinking or who were under the influence of drugs at the time and who therefore may have been slightly impaired. However, these complainants exhibited no significant memory loss, and reported a sexual assault due to guilt or remorse, rather than to "be on the safe side." Some of these complainants may not have wanted to engage in the sexual activity, but they stated that they did not resist or say "no" to the suspects. Others had sexual experiences that were painful or unpleasant, but were nonetheless consensual. One example of a "consensual/regret" case involves a teenaged complainant who stated that:

she was forced into the McDonalds restroom by two suspects (ages 15 and 16), who fondled her and forced her to orally copulate one of them. She told a few friends what

happened and the next day at school her friends jumped one of the suspects and a fight ensued, the police were called, and one of the bystanders told the police that XXXX had raped their friend. During the interview with the victim, the investigating officer asked her what he would see when he looked at the video from McDonalds—would he see her walking willingly into the bathroom with the two boys? When she was asked if she ever told the boys no, she said that she did at first, but that she then went along with everything.

In this case, the investigating officer interviewed one of the suspects, who stated that he and his friend engaged in playful flirting with the complainant prior to the event and that he believed that the complainant had consensually engaged in oral copulation. The complainant later recanted and *“finally admitted that she wasn’t forced to do any of the sexual acts on XXXX and XXXX, and that even though she didn’t want to do it, she did agree.”* The recantation, combined with the suspect’s statement, led us to categorize this as a false report with the motivation of regret. The complainant appeared to believe that the “playful flirting” had gone too far, but did not cry out or physically resist the suspects.

Another case involved a complainant who had been out drinking with a friend and was offered a ride home by two suspects that she met at the nightclub. After the suspects drove the complainant and a witness (her friend) to an apartment, the suspects offered both women more drinks. As both were intoxicated and the witness indicated that she passed out, there was some confusion as to what then happened. The witness remembered seeing the complainant in a closet with one of the suspects, and the complainant did not explicitly remember saying “no” to the suspect’s advances. Because there was ambiguity about what happened, the investigating officer asked the complainant to make a pretext phone call to the suspect. During the call, she asked the suspect what happened. He replied,

‘Don’t you remember? You were the one that initiated the sex. You asked me if I had a condom. I said yes and you asked me to put it on.’ The victim then told the suspect that she felt bad because she felt that she had been taken advantage of. The suspect said, ‘I’m

sorry you feel that way. I totally thought you were into me. We need to hang out so you can see that I'm not a bad guy.'

Although the complainant expressed regret about the sexual activity, both her own account and the suspect's account describe consensual sex and no physical or verbal resistance by the complainant. The suspect further stated that the complainant took an aggressive role in initiating the sexual activity, as she led him into the closet and got on top of him. After talking with the suspect, the victim hung up the phone and said, '*Detective, I want to drop the charges. I know he didn't rape me. It was consensual.*'"

**The Importance of Mental Health Issues.** Mental health issues played a significant role in many of the false reports, with over one-third of the cases (N=18) involving complainants whose fabrications resulted at least in part from some type of mental illness.<sup>18</sup> In some cases, complainants' mental conditions were noted in the case file but these conditions did not appear to play an important role in motivating them to file false reports. However, in other cases, the complainant's mental illness clearly was the motivating factor that led to the false report – either due to hallucinations and delusions, a reduced mental capacity to understand the nature of sexual acts, or a desire for attention as a symptom of her condition. For example, one case involved a victim who was living at an assisted living facility and who fell asleep fully clothed. According to the investigating officer who wrote the follow-up report,

The victim woke up at 2:30 a.m. and observed a black man in her room. She said that her eyes were covered by cloth and she immediately fell asleep. When she awoke at 5:30 she observed that her pants had been pulled down to her ankles and her legs spread apart. She also observed a needle injection wound in her arm. When she urinated she observed semen coming out of her vagina. There was no evidence of forced entry into her room.

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<sup>18</sup> Of course, complainants with mental illnesses should not be treated skeptically solely because of their condition, as research suggests that these individuals may also be at a higher risk of victimization because of their vulnerabilities (Wacker, Parish & Macy, 2008). In addition, these individuals may be reliant upon their perpetrator for financial support, shelter, or employment and as such may be reluctant to disclose prior victimizations.

Officers interviewed the manager at the facility, who told them that the victim suffers from delusions and claims that she has been raped, assaulted, and that people are entering her room and removing her property. This was confirmed by the victim's daughter.

The investigating officer met with the victim, who stated that she had been sexually assaulted every day for the past three years. She stated that every gang member in the city had raped her. She was unable to give a coherent account about the incident under investigation. She kept repeating that she had been raped and beaten by every gang member in the city.

This case was classified as a false report for several reasons. The complainant stated she had been raped multiple times and she had filed three very similar false reports within the past 18 months. She also could not describe the incident, other than stating that she woke to find a non-specific black man in her room. Her daughter and her doctor confirmed that she suffers from delusions and the forensic medical exam did not show any physical evidence that a sexual assault had taken place. The needle mark found on her arm was due to a blood draw the previous day, which also casts doubt on her statement. It appears that her delusions and desire for attention are symptoms of her mental illness, which led her to file multiple false rape reports.

**Examples of Cases with Multiple Typologies.** Many of the cases categorized as false reports involved complainants with multiple motives for filing reports. Although some of these complainants had mental health issues, as well as a desire for retaliation or need for attention, others involved overlapping motivations that were not related to the complainant's mental state. In this section we focus on these types of cases, which present different circumstances for each complainant. The complainant in the first example thought she was being interviewed by a prospective employer. She met him in his car and they discussed an open position for a nanny before the conversation turned more personal.

The suspect said he would marry her on Monday if she would come live with him. The victim and suspect then moved to the victim's vehicle, where he began to rub and suck



her breasts. He then took her to a motel and attempted to rape her (could not get an erection); put his fingers in her anus. The victim and suspect then got dressed and left motel.

When asked if she had done all of these things voluntarily, the victim said she had. The victim asked if there was any law against the suspect making promises of paying her bills and marrying her then reneging on his promise. The IO then asked the victim “why she really made this report.” She said that she made the report because she wanted to be medically examined; she was fearful that the suspect had diseases and she did not want to catch any. She said that she had participated voluntarily and did not want the IO to tell her boyfriend about what she had done.

We categorized this as a false report in which the complainant displayed several motivations for filing: She engaged in consensual sex, as she never attempted to stop the suspect or resist him, and believed that he would marry her and pay her bills. It seems that she was angry at the suspect for failing to follow through on his promises, which led her to file the false report. She was also motivated by the current situation she was in; she had gotten back together with her boyfriend and did not want him to know that she had cheated on him with the suspect. Relating to this desire to avoid trouble, she sought medical treatment because she feared that she might have contracted a sexually transmitted disease. Thus, these three overlapping motives—avoiding trouble as a result of cheating, seeking medical attention, and anger and a desire for revenge—were the deciding factors in the complainant’s decision to make a report of rape.

A second case with multiple motives involved a complainant who displayed several of the so-called “red flags” associated with false reports, such as declining a forensic medical exam, an unwillingness to describe the attack during the second interview, and a description of overt physical resistance during the incident (McDowell & Hibler, 1987). The complainant was riding the bus at night:

returning home after drinking at Club 6065. She got off the bus and was approached by the suspect, who began pulling her hair and telling her that she was a “dirty Mexican bitch.” He pushed her down and she saw that his erect penis was out—he told her to suck it and she did. The victim said that she removed his penis and began striking suspect in face; the suspect then ripped the victim’s necklace from her neck and attempted to remove her pants. The victim stated that she continued to punch the suspect in the face in attempt to get away from him. When officers went to the scene, they found human hair on the ground and a brown belt in the grass (consistent with her story).

When the investigating officer told the victim that he needed to talk to the witness (the friend who picked her up), she said “I don’t want you to talk to her. I did not really tell her what happened.” When the witness was finally put on the phone, she said that “XXXX is a chronic liar. Two weeks ago her car was repossessed. My son has a car that just sits at my house. She asked me if she could use it. I told her no. She told me she hated taking the bus and asked me if she could use the car. I refused. The night that this took place, she called me all night. She was drunk. She told me she was attacked and needed a ride. After the cops left, she asked if she could have my son’s car. She told me she was never going to ride the bus again because of this.” The witness also said, *“I knew she was lying from the beginning, but once she said that I knew she made up the story so that I would let her have my son’s car.”*

This case presented several motives that the complainant may have had for filing the false report. As the witness stated, the complainant was upset about not being allowed to use the car, and may have created this story out of anger and in order to get her way. She also told the witness, police, and friends at the bar she frequents several different stories. The investigating officer believed that the complainant manufactured this story desiring attention from others. Because she told many different people she knew about the incident, and they expressed concern for her, this motive seems plausible. Initially the researchers were in some disagreement regarding whether to categorize this case as a false report, as the evidence found by police of hair and a belt added credibility to the complainant’s story. Yet the fact that the witness stated that the complainant is a chronic liar, and the lengths the complainant went to in order to gain access

to the complainant's son's car suggest that she may have planted the evidence to corroborate her story.

## **DISCUSSION**

The purpose of this study was to determine whether sexual assaults unfounded by the LAPD were false or baseless and to identify the factors that motivated complainants to file false allegations of sexual assault. We found that about three-fourths of the unfounded cases involved false or baseless allegations; the remaining cases were either clearly not false reports or were ambiguous cases that the research team felt should have been investigated further before being cleared. Most of the false reports involved allegations of aggravated rape and in about half of the cases the victim underwent a forensic medical exam and eventually recanted the allegations. Complainants' motivations for filing false reports, which fell into five overlapping categories, included a desire to avoid trouble or a need for an alibi for consensual sex with someone other than a current partner, a desire to retaliate against a current or former partner, a need for attention or sympathy, and guilt or remorse as a result of consensual sexual activity. Many complainants also had mental health issues that made it difficult for them to separate fact from fantasy.

These results suggest that the LAPD is appropriately clearing cases as unfounded most, but not all, of the time. Generally, the investigating officers are following UCR guidelines and are unfounding cases only after an investigation leads them to conclude that the allegations are false or baseless; they typically do not use the unfounding decision to clear—or dispose of—problematic cases. Nonetheless, there were 10 cases with compelling evidence that a crime did occur—physical evidence from the forensic medical exam or witness statements that corroborated the complainant's allegations, injuries to the complainant that were consistent with

her account of the assault, or evidence recovered from the scene of the crime. In most of these cases, a number of which involved complainants and suspects who were intimate partners or acquaintances, the complainant recanted but it was clear that her recantation was motivated by fear of the suspect, pressure from the suspect or his family and friends, or a lack of interest in pursuing the case. It appears that the victim's recantation and/or lack of interest in prosecuting the suspect led the investigating officer to conclude that the allegations, while not false, were not provable and that the case therefore should be unfounded. Coupled with the fact that there were an additional eight cases that we believed should have been investigated further, this suggests a need for additional training on the decision rules for unfounding sexual assaults.<sup>19</sup> Patrol officers and sex detectives need specialized training to understand the complexities of sex crimes and the interview skills that are critical to build rapport with victims and maximize the likelihood of the most forthright self-disclosure.

Further evidence of this need for training comes from our interviews with LAPD detectives. Although some detectives stated that victim recantation was neither a necessary nor a sufficient condition for unfounding, many said that they believed that a report could be unfounded *only* if the complainant recanted her testimony and a few stated that they would *always* unfound the report if the victim recanted her testimony. For example, one officer stated that “the only way we can unfound is if the victim tells us it did not happen—there is no other way.” Other detectives stressed that they would only unfound if the complainant recanted or if her story was utterly impossible. As one officer put it,

In order to unfound you have to prove that it did not happen and in order to do that you have to have a victim who recants her story. If it is something that realistically is

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<sup>19</sup> This is particularly salient because as of January 2010 the LAPD utilizes a non-crime report entitled “Undetermined Sexual Assault.” Depending on the training and biases of the supervisors in charge of the patrol officers and detectives who come across these reports, a sexual assault may never wind up as an actual crime report that requires investigation and, ultimately, a case clearance.

impossible—she says, ‘someone flew me to the moon and raped me’—and she continues to maintain that it happened, you can unfound. But you must do a thorough investigation before you can do that.

Another officer stated categorically that “when the victim says I made a false report, it gets unfounded.” These views regarding the importance of recantation are also reflected in officers’ statements about the techniques they use to “get the victim to recant” or to “break her down and admit to what she was really doing.” According to one detective, “we present the conflicting evidence to the victim and try to get the victim to admit that it did not occur.” Another officer recounted a case in which “we really beat the victim up emotionally because we did not believe her story,” and a third stated that the goal with teenagers was to “get them to admit it didn’t happen and have them write it down; get them caught in discrepancies and have them tell the story left, right, and center.” These comments suggest that at least some LAPD sex detectives believe that recanting is an important, if not a necessary, element of unbounding; they also believe that it is appropriate to use techniques designed to encourage complainants to recant.

It is important to point out that these detectives were in the minority. In fact, many of the officers we interviewed reported that they were skeptical of complainants who recanted, noting that recanting “is often based on fear.” Typical of these comments are the following:

Either it did not happen in the City of Los Angeles or the victim recants the allegation and you actually believe her. I do believe that there are recantations that are lies. For me, it would take the victim clearly indicating that she lied, providing a rational motivation for lying, and we believe her when she says it didn’t happened. Recanting does not necessarily mean that we will unfound the case. If we continue to believe that a crime occurred, the case can be cleared as ‘IC’ [investigation continuing].

Many victims recant because . . . they are tired of dealing with it; they want to go back to normal and they feel responsible for the stress that has emerged. A victim recant can be used but it should be corroborated and followed up by the detective . . . to make sure that the recantation is valid.

When asked how they would clear a case in which the victim recanted but the evidence and case factors suggested that the recantation was motivated by threats or intimidation, most of the officers we interviewed stated that they would present the case to the district attorney for a pre-arrest filing decision. Almost without exception, these respondents noted that the district attorney would reject the case. As one officer put it, “I would not unfound if the victim recanted and the evidence suggested that the crime did occur. But the DA would reject it, absolutely.” Another detective emphasized that “I believe all of my victims until I can prove that they are not telling the truth. If the victim says that it did not happen [and I don’t believe her], I still present it to the DA and let the DA decide. They will reject it, of course.” A third officer stated,

I will put it in the report that the victim is being uncooperative and that it appears that she is being threatened or pressured. Talk to her and provide her with referrals to agencies that can help her. But the DA is unlikely to file—you cannot force someone to testify in court and therefore the DA has nothing.

As these comments make clear, when confronted with a complainant who says that the crime did not occur but evidence that suggests it did, LAPD detectives typically do not unfound the case. Rather, they present the case to the Los Angeles County District Attorney, who rejects it based on the fact that the complainant refuses to cooperate in the investigation and prosecution of the suspect. Our review of these types of cases revealed that the case is then cleared by exceptional means.

Several other findings also merit comment. Using weighted data that took into account the fact that our sample was stratified by LAPD division and, within each division, by the type of case closure, we calculated that the overall rate of false reports for the LAPD in 2008 was 4.5 percent, with about half of the cases involving a complainant who recanted. Although this is consistent with estimates of the prevalence of false reports found in recent studies using appropriate methodologies, it is important to point out that our estimate is based on only the

unfounded cases we examined. We believe that this rate most likely underestimates the prevalence of false reports among all cases reported to the LAPD in 2008. This is because our interviews with LAPD detectives revealed that some of them were reluctant to categorize a case as “unfounded,” even if they believed that it was false or baseless. Some detectives reported that they would sometimes clear the case by exceptional means<sup>20</sup> or keep the case open. Although these detectives were in the minority, their comments suggest that the rate of false reports among rapes reported to the LAPD in 2008 may be higher than 4.5 percent.

Also of interest is the fact that more than three-quarters of the reports classified as false allegations were reports of aggravated rape—the complainant reported that she was forcibly raped and indicated that the rape was perpetrated by a stranger, by multiple assailants, by a suspect wielding a weapon, or that she suffered collateral injuries. Many of the complainants, especially young teenagers, reported that they were abducted by a man (or men) in a vehicle (often a white van), taken to an unknown location, threatened with physical harm, and sexually assaulted. Most of the complainants who alleged that they were attacked by a stranger provided very vague descriptions of the suspect, stated that they resisted the suspect physically (e.g., by kicking him in the groin or biting him on the face), and that they somehow managed to escape. The fact that the allegations deemed to be false conform so closely to the stereotypical view of forcible rape/real rape (Estrich, 1987; Kalven & Zeisel, 1966) suggests that complainants believe that their stories will be more viewed as more credible if they do not deviate too sharply from society’s view of the dynamics of a “real rape.” The problem with this is that the aggravated rape factors are likely to be viewed as “red flags” by sex detectives and other criminal justice professions. As Lonsway, Archambault, and Lisak (2009: 3) note, “Concerns regarding the

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<sup>20</sup> This which would be an inappropriate use of this case clearance type since the UCR Handbook states that cases cleared by exceptional means must have an identified suspect and probable cause to make an arrest.

legitimacy of a sexual assault report are often triggered by the presence of ‘red flags,’ based on specific characteristics of the victim, suspect, or assault. Yet many of these ‘red flags’ are actually based on our cultural stereotypes of what constitutes ‘real rape.’” This was confirmed by one of the detectives we interviewed, who described the type of case that would be “red flagged.” As this respondent put it, “the stories are pretty wild,” noting that they often involve teens who allege that they were raped by multiple men, who manage to escape or who “give outlandish reasons as to why they did not try to escape.”

Our findings also suggest that complainants’ motivations for filing false rape reports are varied and complex, and that they differ depending on the age of the complainant. Whereas teenagers’ false allegations were motivated primarily by a desire to avoid trouble with parents or caregivers or by a need for attention or sympathy, adults’ allegations were more typically motivated by a desire for revenge against a partner or by a need to cover up a consensual sexual relationship. Complainants, regardless of age, often had mental health issues, which, while not the primary motivation for filing a false report, overlapped with other motivations, especially attention seeking. These motives also emerged in our interviews with LAPD sexual assault detectives, who were asked what would motivate a complainant to file a false report. Regarding the teenagers who file false allegations, one officer stated, “The one that we get most often is young teenagers who don’t make curfew or have done something that they know their parents won’t approve of—they ditched school, were using drugs, or had consensual sex. . . they try to place the blame on someone other than themselves.” Another detective gave a laundry list of reasons why an adult woman might file a false report: “to get out of trouble, to explain away her actions, to hide consensual sex, to get sympathy, to explain away drug usage or because she will lose her housing or kids if she tests dirty for drugs.”



Our study, which is based on data from one of the largest police departments in the United States, improves on prior research on false reports of rape in a number of important ways: we used a definition of a false rape allegation that is consistent with FBI guidelines for clearing cases; we differentiated between false allegations and baseless reports; and we did not assume that recantation was a necessary or a sufficient condition for concluding that a report was a false report. We also did not assume that all of the reports unfounded by the LAPD were false or baseless; rather, we reviewed the detailed case file for each of the unfounded cases and, based on the information in the file, categorized the case as a false allegation, a baseless report, not a false report, or a case that should have been investigated further. We also used the information in the case file to identify complainants' motivations for filing false reports, and we supplemented the data from case files with information gleaned from in-depth interviews with sex detectives. Our study is thus more comprehensive than prior research, and we believe that our findings shed important light on the prevalence and nature of false allegations of sexual assault.

These improvements notwithstanding, our study is not without limitations. Although we were provided with a redacted copy of each case file, we cannot know with any degree of certainty whether the information recorded in the case file was an accurate and unbiased report of what happened and what complainants, witnesses, and suspects said about the alleged incident. In addition, as noted above, we examined only cases that were unfounded; we did not examine the cases that were cleared by exceptional means and that also may have involved false allegations. This suggests that our estimate of the prevalence of false allegations of rape may underestimate the actual rate.

## CONCLUSION

It is clear from this study that some girls and women do lie about being sexually assaulted. More than two-thirds of the cases that were unfounded by the LAPD in 2008 were false allegations in which complainants deliberately lied about being raped. This clearly is a cause for concern. False allegations of rape feed societal perceptions that many—perhaps even most—rape reports are fabricated and lead to cynicism and frustration among detectives tasked with investigating sexual assaults. They also undermine the credibility of genuine victims and divert scarce resources from the investigation of the crimes committed against them. As Lonsway and her colleagues (2009:1) recently concluded, “The issue of false reporting may be one of the most important barriers to successfully investigating and prosecuting sexual assault, especially with cases involving nonstrangers.”

## SECTION V

### THE OVERUSE OF THE EXCEPTIONAL CLEARANCE

With homicide your victim isn't going to be interviewed; their trauma is over. In most property crimes sure there is trauma, your car was stolen. But nothing can compare to sexual assault. We don't get enough training in trauma, in dealing with the trauma of victims and the when and how of interviewing them. It's a very unique crime that victims don't get over, and they definitely won't get over it as long as the perp is rolling around.  
–**Detective, Los Angeles County Sheriff's Department**

I worked patrol for a long time and I was one of 'those' officers. The key is not to get jaded and to realize that weird stuff *does* happen with regards to sex crimes. Patrol officers are our first line of contact for victims and once they [victims] have a bitter taste in their mouths it's difficult. Guys [police officers] are nervous to handle it because they don't know how to talk about it and are too embarrassed to say penis, etc. I'm not saying that women rule, because there are guys out there that are fabulous. But, fortunately or unfortunately, patrol has first contact [with victims].  
–**Detective, Los Angeles Police Department**

More often than not once they have [victims] gotten to the DA's office it's fairly rare and unlikely that they will not want to talk. They have no idea about the system and what we say means a lot. They take their cues from what we say. –**Deputy District Attorney, Victim Impact Program, Los Angeles County District Attorney's Office**

Thirty-five years ago, Susan Brownmiller wrote in *Against Our Will: Men, Women and Rape* (1975) that the complaints of rape victims often were met with insensitivity and/or hostility on the part of police and other criminal justice officials. Brownmiller noted that, contrary to Lord Hale's assertion that "rape is an accusation easily to be made," many rape victims did not report the crime to the police, and that those who did soon discovered that, consistent with Lord Hale's homily, it was a crime "hard to be proved."<sup>21</sup>

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<sup>21</sup> In 1734, Lord Chief Justice Matthew Hale wrote that concerning rape, "it must be remembered . . . that it is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho never so innocent." M. Hale, *Historia Placitorum Coronae*. London: Nutt and Gosling (1734).

As we enter the second decade of the 21<sup>st</sup> Century, the issue of police—and prosecutor—handling of sexual assault complaints continues to evoke controversy and spark debate.<sup>22</sup> Critics charge that police make inappropriate decisions regarding whether rape cases should be accepted for investigation, misclassify rape and other sex crimes as non-crimes based on archaic notions of what constitutes “rape,” unfound reports at unreasonably high rates, and fail to adequately investigate the cases they do accept. They also allege that prosecutors’ assumptions regarding “real rapes” and “genuine victims” (Estrich, 1987; LaFree, 1989) lead them to decline to file charges in cases in which it is clear that a sexual assault occurred but in which it also is clear that the odds of proving the case to a jury are low. As Dempsey<sup>23</sup> put it in her testimony at a recent United States Senate hearing convened to investigate the response of the criminal justice system to the crime of rape, “the chronic failure to report and investigate rape cases is part of a systemic failure to take rape seriously both within the criminal justice system and within our communities more generally.”

Missing from these critiques is any discussion of the use (and misuse) of the exceptional clearance by police. As we explain in more detail below, cases can be cleared—or solved—by the police in two ways: by the arrest of at least one suspect or by clearing the case exceptionally. Although cases that are exceptionally cleared do not result in the arrest of the suspect, they are considered solved in the sense that the suspect is known to the police but there is something beyond the control of law enforcement that precludes the police from making an arrest (e.g., the victim refuses to cooperate in the prosecution of the suspect or the suspect has died or cannot be

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<sup>22</sup> For example, in May of 2010, the New York Police Department publicly apologized to a rape victim whose case was inappropriately downgraded from a felony sexual assault to a misdemeanor and in June of 2010 the Baltimore Police Department came under fire after it was revealed that their unfounding rate—30 percent—was the highest in the nation. These—and other—exposes of the treatment of rape victim led to a Senate Hearing in September of 2010 on “Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases.”

<sup>23</sup> *Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases. Committee on the Judiciary, Subcommittee on Crime and Drugs, US Senate, 111<sup>th</sup> Cong. (2010, Testimony from Professor Michelle Madden Dempsey, Villanueva School of Law).*

extradited). If police officers are clearing cases inappropriately—and the rules for doing so are clearly articulated by the Federal Bureau of Investigation’s Uniform Crime Handbook—and are either failing to investigate sexual assault cases thoroughly or not making arrests when they have probable cause to do so and the victim is willing to go forward with the case, there is potential for a miscarriage of justice. Specifically, the misuse of the exceptional clearance raises the possibility that individuals who may in fact be guilty of rape are not arrested, prosecuted, and punished.

Also missing from these critiques is discussion of the role that the *prosecutor* plays in clearing cases. Prior research on prosecutorial decision-making in sexual assault cases has focused on the formal decision to file charges or not once an arrest has been made (Frohmann, 1991; 1997; Kerstetter, 1990; Kingsnorth, MacIntosh & Wentworth, 1999; Spohn & Holleran, 2001). This research assumes—either explicitly or implicitly—that the prosecutor’s role in the process begins when the police arrest a suspect and present the case to the screening unit for a charging decision. This ignores the fact that law enforcement officials may present the case to the prosecutor prior to making an arrest and, based on the prosecutor’s assessment of the evidence in the case and evaluation of the credibility of the victim, either make an arrest or (inappropriately) clear the case exceptionally. The role of prosecutor, in other words, may begin well before an arrest is made and the decisions s/he makes may influence—indeed determine—how the case is cleared.

In this section, we investigate the use of the exceptional clearance in sexual assault cases. Using data on sexual assaults reported to the Los Angeles Police Department (LAPD) and the Los Angeles County Sheriff’s Department (LASD) from 2005 through 2009, we examine the way these cases are cleared, with a focus on cases that are cleared by arrest and by exceptional

means. (The results of our quantitative analysis of case outcomes are presented in Section VI). In addition, we use detailed qualitative and quantitative data on a sample of cases from 2008 to identify the characteristics of cases that are cleared exceptionally and to evaluate the reasons given by police and prosecutors to justify this type of clearance. We begin with a discussion of the circumstances under which cases may be cleared exceptionally and with a summary of the limited research examining the use of this clearance type. We then describe the decision-making context in Los Angeles, with a focus on the role played by the prosecutor in the “pre-arrest charge evaluation process.” The following section examines cases cleared by exceptional means and evaluates the extent to which these cases meet the four criteria that the FBI requires be met before this clearance type can be used. We end with a discussion of the policy implications of (mis)using the exceptional clearance.

### **CASE CLEARANCES: CLEARED BY ARREST AND BY EXCEPTIONAL MEANS**

According to the Uniform Crime Reporting Handbook (Federal Bureau of Investigation, 2004), offenses are cleared either by arrest or by exceptional means. The handbook states that “an offense is cleared by arrest, or solved for crime reporting purposes, when at least one person is (1) arrested, (2) charged with the commission of the offense, and (3) turned over to the court for prosecution (whether following arrest, court summons, or police notice)” (p. 79). Regarding exceptional clearances, the handbook notes that there may be occasions where law enforcement has conducted an investigation, exhausted all leads, and identified a suspect *but is nonetheless unable to clear an offense by arrest*. In this situation, the agency can clear the offense by exceptional means, *provided that* each of the following questions can be answered in the affirmative (pp. 80-81):

- Has the investigation definitely established the identity of the offender?
- Is the exact location of the offender known so that the subject could be taken into custody now?
- Is there enough information to support an arrest, charge, and turning over to the court for prosecution?
- Is there some reason outside law enforcement control that precludes arresting, charging, and prosecuting the offender?

To illustrate the types of cases that might be cleared by exceptional means, the handbook provides a list of examples, many of which involve the death of the offender or an offender who is unable to be arrested because s/he is being prosecuted in another jurisdiction for a different crime or because extradition has been denied. One of the examples provided is when the “victim refuses to cooperate in the prosecution,” but there is an added proviso, which states that this alone does not justify an exceptional clearance and that the answer must also be yes to the first three questions outlined above (p. 81).

In his review of the development of the uniform crime reporting system, Feeney (2000-2001, p. 14) notes that the instructions contained in the early UCR handbooks defined exceptional clearances very narrowly<sup>24</sup> and reflected an expectation that “most clearances would be based on arrests and that the number of exceptional clearances would be limited.” He bolsters this by pointing out that since the inception of the UCR the FBI has labeled its tables of clearance data “cleared by arrest.” According to Feeney (2000-2001: 18), “There can be little doubt that arrest is the decisive event in the vast majority of instances in determining whether a clearance is to be recorded or not.”

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<sup>24</sup>In the 1929 handbook, they were limited to (1) suicide of the offender, (2) double murder, (3) deathbed confession, (4) confession by an offender already in custody.

Feeney also takes issue with the fact that some jurisdictions have interpreted the term “charged” in the definition of cleared by arrest (i.e., cleared by arrest requires that the suspect be charged with the commission of the offense) to mean charged by the prosecutor. He argues that the term meant (and continues to mean) charged by the police<sup>25</sup> and not by the prosecutor. He bases this on the fact that the developers of the uniform crime reporting system envisioned collecting data not only on offenses known to the police but also on persons charged by the police. According to Feeney (2000-2001: 15), they used this term, rather than “persons arrested,” to differentiate between “two types of arrests: those made for the purpose of prosecution and those considered to be ‘suspicion’ arrests.” That is, they wanted to distinguish between persons who were arrested and charged with a crime by the police and persons who were arrested and brought to the station as a result of an officer’s suspicions that they were involved in a crime. As he points out (p. 15), “the term ‘charged by the police’ was their way of denoting the more normal kind of arrest.”

Feeney’s historical overview of the development of the uniform crime reporting system, then, suggests that there was an expectation that most crimes (that were cleared) would be cleared by arrest, which would require that a suspect be arrested and charged with a crime by the police, and that exceptional clearances, which were narrowly defined, would be just that—exceptional.

## **RESEARCH ON CASE CLEARANCES**

Because the FBI does not differentiate between cases cleared by arrest and those cleared by exceptional means, most research examining case clearances—either over time or across

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<sup>25</sup> For clarification, we spoke with the FBI Section Chief who oversees the UCR program. He clarified that, according to the FBI, “charged” means a *police booking procedure* which results in the suspect being turned over to the courts for prosecution, not the filing of charges by a prosecutorial agency (R. Casey, Personal Communication, January 14, 2011).



jurisdictions—has been conducted using the overall case clearance rate (Addington, 2006; Alderden & Lavery, 2007; Lee, 2005; Puckett & Lundman, 2003; Regoeczi, Jarvis & Riedel, 2008). In fact, with the exception of a study of Chicago homicide data (Riedel & Boulahanis, 2007), a more recent study using National Incident-Based Reporting System (NIBRS) data (Jarvis & Regoeczi, 2009), and one study of sexual assault case clearances (Bouffard, 2000), there are no studies that examine the predictors of different types of case clearances and none that examine clearances using national data.

Jarvis and Regoeczi (2009:175) argue that there are compelling reasons for separating cases cleared by arrest and cases cleared by exception. First, although both types of cases are considered solved for reporting purposes, cases cleared by exceptional means do not result in the arrest of the suspect. This clearly is an important difference. In addition, the cases that fall into the two categories may vary widely in terms of victim, suspect, and case characteristics; thus, combining them into a single “case cleared” category raises the possibility that the effects of these characteristics may be under- or overstated. Finally, combining the two types of cases can inflate a law enforcement agency’s reported case clearance rate.

The validity of these points was confirmed by Riedel and Boulahanis (2007), who used Chicago homicide data from 1988 to 1995 to investigate the similarities and differences in cases cleared by arrest and by exceptional means. More specifically, they examined cases cleared exceptionally because the case was “barred to prosecution,” which meant that the Felony Review Unit of the Cook County State’s Attorney’s Office did not accept the case for prosecution. Interestingly, in an earlier study Boulahanis (1998) reported the results of interviews with police and with a prosecutor in the Felony Review Unit in which he asked them who made the decision to exceptionally clear a case. According to the police, the decision was made by the prosecutor,

who decides whether to approve the charges; in contrast, the prosecutor stated that the decision was “controlled solely by the police department.” As Boulahanis (1998: 35) noted, because “all cases that are not approved because of a lack of evidence may be resubmitted for review,” the decision to investigate further or to clear the case by exceptional means rests solely with the police department.

Riedel and Boulahanis (2007) found that 10.7% of homicide cases reported to the Chicago Police Department from 1982 to 1995 were cleared by exceptional means, while 64.6% were cleared by arrest. Thus, “including exceptional clearances among arrest clearances can substantially increase the latter total” (p. 156). When the authors examined the likelihood that the case would be exceptionally cleared (i.e., barred to prosecution), they found that cases cleared exceptionally were more likely to be domestic homicides and to have occurred in a private indoor or public outdoor location rather than a vehicle. In addition, cases involving white offenders were less likely than those involving African American offenders and cases involving male victims and male offenders were less likely than those involving female victims and male offenders to be cleared by exceptional means. Riedel and Boulahanis (2007: 162), who were careful to point out that the results of their study could not be generalized due to the fact that there are “no systematic studies of the phenomena” of exceptional clearances, called for additional research designed to provide data on the frequency of exceptional clearances and circumstances in which they are used.

Bouffard’s (2000) study of case closures in sexual assault cases reported to an unnamed law enforcement agency was a more comprehensive analysis than either the Reidel and Boulahanis (2007) or the Jarvis and Regoeczi (2009) studies. This study examined five different types of case closures: unfounded, cleared by arrest, cleared by exceptional means because of

victim's lack of cooperation, cleared by exceptional means due to lack of prosecutorial merit, and open. For this particular law enforcement agency, 27.9 percent of the reports were unfounded, 18.1 percent were cleared by arrest, 31.6 percent were cleared by exceptional means, and 22.4 percent were still open at the time of data collection (Bouffard, 2000, Table 1).

Bouffard found that the probability that the report would be unfounded was reduced in cases in which the victim had a prior relationship with the suspect and in cases in which the victim agreed to a sexual assault exam; reports of first and second degree rape, on the other hand, were more likely than other crimes to be unfounded. Not surprisingly, Bouffard also found that cases in which the victim and the suspect had a prior relationship were more likely to be cleared exceptionally (due to a lack of victim cooperation and due to a decision that the case did not merit prosecution). The author of this study concluded that the variables included in the models “appeared to have different effects on each type of case closure” (Bouffard, 2000: 540).

Considered together, the limited amount of research on case clearances highlights the importance of separately analyzing cases cleared by arrest and by exceptional means. The factors that affect these outcomes are different and testing only for their effects on the overall case clearance rate is likely to produce misleading results and lead to inaccurate conclusions about the police investigative function.

## **CLEARING SEXUAL ASSAULT CASES IN LOS ANGELES**

The process used by the Los Angeles Police Department and the Los Angeles County Sheriff's Department to clear sexual assault cases is similar to the process reported by Riedel and Boulahanis (2007) for homicides handled by the Chicago Police Department. Reports of sexual assault are either unfounded, cleared by arrest, cleared by exceptional means, or are unsolved and the investigation is continuing. If the detective investigating the crime has identified a

suspect and has probable cause to arrest the suspect, the detective will either arrest the individual and then present the case to a deputy district attorney from the Victim Impact Program (VIP)<sup>26</sup> of the Los Angeles County District Attorney's Office for a formal filing decision, or delay making an arrest and present the case to a Deputy District Attorney for a pre-arrest charge evaluation decision. Because the District Attorney's policy is to interview all sexual assault victims prior to filing charges, the interview with the victim typically takes place at the same time (or shortly thereafter).

Deputy District Attorneys interviewed for this project<sup>27</sup> were asked to explain why the detective investigating the crime would not make an arrest if s/he had an identified suspect and probable cause to arrest. Most pointed to the fact that once an arrest is made, the district attorney has only 48 hours in which to file charges, which may not be sufficient time to conduct further investigation and gather additional evidence. As one of the respondents stated,

Generally they do that because most of the cases are going to require further investigation and they want some guidance on what will be needed to put the case together. We have a very narrow window in which to file if the suspect is in custody. On occasion, if the suspect is in custody, he will have to be released because we don't have enough at that time to file charges. We don't want to tip our hand and let the suspect know that he is under investigation. If he doesn't know that he is under investigation, he doesn't have time to come up with a story or an alibi. We need the time to put the case together because most of them are one-on-one situations.

Other respondents echoed this, noting that the pre-arrest charge evaluation allowed the district attorney to indicate to the investigating officer whether the evidence currently available met the office's filing standard and to specify what additional steps the officer should take to bolster the evidence in the case. As the respondent quoted above stated, "sometimes cases are rejected

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<sup>26</sup> According to the Victim Impact Program's informational pamphlet, "victims and law enforcement officers reap tangible benefits from a vertical prosecutor who seeks to put victims at ease and provide more effective prosecution of highly sensitive cases." <http://da.co.la.ca.us/pdf/vip.pdf>.

<sup>27</sup> In June and July of 2010 we interviewed 30 deputy district attorneys from the Victim Impact Program about, among other things, their standards for filing charges, the difficulties encountered in prosecuting sexual assaults, and the ways in which they evaluated victim credibility.

outright because there just isn't anything there that we can work with but other times they are rejected for further investigation.” This district attorney estimated that about 80% of the cases presented for a pre-arrest charge evaluation decision were rejected, most for further investigation.

Detectives from the two law enforcement agencies also were asked to comment on the pre-arrest charge evaluation process.<sup>28</sup> Many acknowledged that although it was not unique to sex crimes, pre-arrest charge evaluation occurred much more frequently in these types of crimes because “sex crimes—especially those involving acquaintances—are very hard to prove.” Another common comment was that it was important “to run things by the DA before making an arrest” to ensure the evidence was sufficient for filing. As one detective put it,

It could be a moral issue. Is it right to arrest this person and take away his freedom even if for only 48 hours? Also it is not always wise to arrest the person right off the bat because you may need to do more work on the case—a pretext phone call, and so on. You may want the DA's opinion as to whether it's [sufficient evidence] there or not.

Another detective put it similarly, noting that “you don't let the DA decide your case, but even if you've investigated the case thoroughly you may need a second opinion to see whether the case will be filed. The DA may give advice regarding the investigation needed to get a successful filing.”

It is important to note that detectives were not unanimous in asserting a need to include the DA's office in a case prior to making an arrest. Many emphasized the role of detective discretion in whether to make an arrest, particularly in sexual assaults involving nonstrangers. For instance, one detective stated, “It boils down to my judgment. You don't want to arrest someone and put a rape charge on them for the rest of their life, but you don't want someone to

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<sup>28</sup> We interviewed 52 detectives from the Los Angeles Police Department and 24 from the Los Angeles County Sheriff's Department. We also partnered with three LA agencies—the Domestic Abuse Center, the Valley Trauma Center, and the UCLA Rape Treatment Center—and interviewed 17 sexual assault survivors about their experiences with the criminal justice system.

get away with it either.” Another noted the differing standards of action for the police and prosecutors, emphasizing that “If I’ve got probable cause for an adult and it’s a felony crime there’s no decision there, they’re getting arrested. I can’t think of a time where I haven’t arrested when I have probable cause.” Taking this logic a step further, another detective said “First you do the investigation and have a game plan to arrest the guy. If the DA files charges then good, but if not then it [the arrest] is still on his record. A lot of times that is the avenue we have to take because a lot of times you know the DA will not file so if we don’t arrest then he is getting off scot free.” This detective’s remark highlights the powerful role of the police in setting the tone for sexual assault victims’ access to the criminal justice system, which is further affirmed by the following statement from a deputy district attorney:

Very often the police officer will present the case to us before making an arrest. If we don’t believe that it is fileable, an arrest won’t be made. There isn’t any point if we aren’t going to file charges. If they have probable cause to make an arrest, they can go ahead and do so and then present it to us for a filing decision.

These comments suggest that detectives’ decision-making is influenced by their perceptions of whether charges will be filed by the district attorney’s office, and prosecutorial decision-making is influenced by the context in which the police present the case. For example, a prosecutor stated, “If I believe that what they [the detective] present is enough then I will file it. If the suspect is in custody I am more likely to take that chance.” Taken together, these findings indicate that the decision to arrest (or not) has serious implications for both sexual assault suspects (potentially getting off “scot free”) and victims (potentially seeing no action taken by the police).

Returning to the pre-arrest charge evaluation process, the deputy district attorney reviewing the case prior to arrest of the suspect can either accept the case for prosecution, send the case back to the investigating officer for further investigation, send the case to the city

attorney for prosecution as a misdemeanor, or decline the case for prosecution. If the evidence in the case meets the DA's standard for filing (see below), the suspect will be arrested and the case will be cleared by arrest. If the case is sent back for further investigation or if the evidence is deemed insufficient to justify charging, the investigating officer will either continue the investigation and, once additional evidence is obtained, resubmit the case for a second review by the DA or clear the case by exceptional means.

It is also important to point out that the standard used by the Los Angeles County District Attorney's Office in screening cases (either before or after arrest) is a trial sufficiency standard (Jacoby, 1980). That is, the deputy district attorney will file charges only if there is sufficient evidence to prove the case beyond a reasonable doubt at a jury trial. Moreover, the policy in sexual assault cases is that charges will not be filed without some type of corroboration<sup>29</sup> of the victim's testimony—DNA evidence that establishes the identity of the perpetrator, injuries to the victim, witnesses who can corroborate the victim's testimony, or physical or medical evidence that is consistent with the victim's account of the incident. Many of the respondents interviewed for this project emphasized that rejection is likely if the incident is a "she said/he said" situation in which the victim is claiming that she was forced to engage in sexual relations but the suspect contends that the sexual acts were consensual and there is no corroboration of the victim's testimony. In fact, when asked whether there are any types of "she said/he said" cases that would be filed without corroboration of the victim's allegations, one deputy district attorney

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<sup>29</sup> The persistence of corroboration requirements raises questions about the true impact of rape law reform, as was demonstrated during the US Senate hearing about rape in September 2010. Along with her testimony, Professor Dempsey provided a copy of a letter sent to the Cook County State's Attorney's office in Illinois alleging that "the Cook County State's Attorney's Office is generally not authorizing felony charges for sexual assault reported by victims against nonstrangers unless there is 'corroborative evidence' such as bodily injury, a third-party witness, or an offender confession. Whether or not this custom is explicitly endorsed by written policy, it appears that the Cook County State's Attorney's Office has adopted a charging standard that effectively adds extrastatutory elements to the crime of sexual assault. This practice protects most rapists from the threat of criminal prosecution, devastates most victims who seek criminal justice assistance, and leads to the continued silence of most victims of sexual assault."

replied “No. That would be a violation of office policy. There are cases where I would like to, but no.”

It is also important to note that, historically—although inconsistently practiced—the Los Angeles Police Department’s policy has been that a felony crime can be cleared by arrest only if the district attorney files felony charges in the forty-eight hour window of time after an arrest. In other words, the LAPD interprets the UCR Handbook’s statement that “an offense is cleared by arrest . . . when at least one person is (1) arrested, (2) charged with the commission of the offense, and (3) turned over to the court for prosecution” to require the filing of charges by the *prosecutor*. Thus, if the suspect is arrested but the deputy district attorney reviewing the case declines to file charges—depending on informal norms at the detective’s division and the preferences of her/his supervisor—the case will be cleared by exceptional means, and not cleared by arrest. This is contrary to the policy statements in the UCR Handbook, which indicate that cases can be cleared by exceptional means if the police have an identified suspect but, for reasons beyond their control, are unable to make an arrest. Conversely—albeit also inconsistently—the LASD accurately interprets the UCR Handbook’s criteria to require solely the arrest of the offender and turning him/her over to the court for prosecution, *irrespective* of the prosecutorial decision to file felony charges.

To summarize, although the responsibility for clearing cases rests with law enforcement officials, the *process* of clearing cases in Los Angeles involves discretionary decisions by both police/sheriff detectives and the prosecutor. The district attorney influences case clearances through the pre-arrest charge evaluation process, in which cases are reviewed for evidentiary sufficiency before an arrest is made. If the evidence is deemed sufficient, an arrest is made; if not, the case is either investigated further and resubmitted to the district attorney or cleared



exceptionally. As Riedel and Boulahanis (2007: 156) noted regarding a similar process in Chicago, both agencies benefit from this system:

On the one hand, the Felony Review Unit does not have to include in its conviction percentage the cases that were never prosecuted. On the other hand, cases barred to prosecution are included in exceptional clearances so that the total clearance rate of CPD appears substantially higher than it actually is.

## **THE EXCEPTIONAL CLEARANCE OF SEXUAL ASSAULT**

In this section, we present descriptive data on case clearances in rape and attempted rape cases, with a focus on cases cleared by arrest and cleared by exceptional means. These data are from two sources. Each agency provided an electronic data file of all sexual assaults involving female victims over the age of 12 that were reported from January of 2005 through December of 2009. There were 10, 832 sexual assaults reported to the Los Angeles Police Department and 3,301 reported to the Los Angeles County Sheriff's Department. For this analysis, we selected only cases involving rape<sup>30</sup> or attempted rape (N = 5,031 for LAPD; N = 2, 891 for LASD). In addition, we obtained the case files for a sample of 2008 sexual assaults reported to the LAPD (N = 401) and for all 2008 sexual assaults reported to the LASD (N = 543). We use the 2005-2009 data to illustrate the patterns of case clearances and the 2008 data to identify the characteristics of cases cleared by exceptional means.

As shown in Table V.1, which presents case outcomes for reports of rape and attempted rape handled by the two agencies from 2005 to 2009, a substantial number of cases reported to each agency are cleared by exceptional means. In fact, cleared by exceptional means is the *modal* case clearance type for the LASD, where 54.2% of all cases are exceptionally cleared. Coupled with an arrest rate of 34.7%, this gives the LASD an overall case clearance rate of

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<sup>30</sup> This study defines sexual assault as all of the following: penile/vaginal penetration, sodomy, oral copulation, spousal rape, rape with a foreign object, rape by intoxication, and sexual battery.

88.9%. The pattern is similar for the LAPD, although this agency has an overall clearance rate (45.7%) that is only about half the clearance rate for the LASD. Of rapes and attempted rapes reported to the LAPD, 12.2% were cleared by arrest and 33.5% were cleared by exceptional means. For each agency, then, combining exceptional clearances with clearances by arrest substantially inflates the overall case clearance rate.

Table V.1. Case Outcomes, Rapes and Attempted Rapes Reported to the LAPD and the LASD, 2005 to 2009

Case Outcomes	Los Angeles Police Department N = 5,031		Los Angeles County Sheriff's Department N = 2,891	
	N	%	N	%
Case Cleared	2,300	45.7	2,569	88.9
<i>Cleared by Arrest</i>	615	12.2	1,002	34.7
<i>Cleared by Exceptional Means</i>	1,684	33.5	1,567	54.2
Unfounded	546	10.9	30	1.0
Investigation Continuing	2,185	43.4	292	10.1

It is important to note that the overall clearance rate for the LAPD is similar to the national clearance rate for forcible rape. According to the FBI report, *Crime in the United States, 2009*, 41.2 percent of all forcible rapes were cleared by arrest or exceptional means in 2009.<sup>31</sup> The clearance rate for the LASD, on the other hand, is more than twice the national rate. This reflects both a very low unbounding rate (only 30 reports, or 1.0% of all reports from 2005 to 2009, were unfounded) and a small number of cases that were not solved and in which the investigation was continuing (292 or 10.1%). Although the FBI does not consistently report national or regional data on unbounding, a specialized report on *Sex Offenses and Offenders* (Bureau of Justice Statistics, 1997) noted that 8 percent of the forcible rapes reported to law

<sup>31</sup> U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 2009*, Table 25.

enforcement agencies in 1995 were unfounded. The LAPD unfounding rate (10.9%) was somewhat higher than this, but the LASD rate (1.0%) was substantially lower.<sup>32</sup>

**Characteristics of Cases Cleared by Exceptional Means.** We use data on sexual assaults reported to the LAPD and the LASD in 2008 to examine the characteristics of cases cleared by exceptional means. Information on these cases was collected from redacted copies of the case files, which were provided to us by each agency. These files included the initial report taken by the patrol officer, the follow-up reports written by the detective to whom the case was assigned for investigation, and the charge evaluation worksheets for cases that were presented to the district attorney for a charging decision (either before or after arrest). The files included the victim's statement, summaries of interviews with witnesses, the suspect's statement (if the suspect was interviewed), the results from forensic evidence collection, and descriptions of evidence that was collected at the scene of the crime.

Table V.2 presents information on the case/crime characteristics, the victim characteristics, the suspect characteristics, and characteristics of the police investigation for these exceptionally cleared cases. Although a discussion of all of these data is beyond the scope of this paper, we can paint a picture of the "typical" exceptionally cleared case. The typical case that was cleared by exceptional means was a case in which:

- The most serious charge was rape.
- The suspect subdued the victim using bodily force only.
- The suspect and victim were acquaintances or intimate partners.

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<sup>32</sup> Officials in the Los Angeles County Sheriff's Department speculated that reports deemed "false or baseless" were handled differently by that agency. They noted that it is within Deputy Sheriffs' discretion to utilize a non-crime report entitled "Suspicious Circumstances, Possible Rape" when they are uncertain if the elements of the crime of rape are present. This tends to occur in "he said/she said" acquaintance cases involving alcohol and some form of impaired memory on the part of the victim. Notably, as of January 2010 the LAPD utilizes a similar non-crime report entitled "Undetermined Sexual Assault." It is important to recognize that—for both agencies—depending on the extent of follow up investigation and detectives' discretion these cases do not necessarily get reclassified into actual crime reports and thus are excluded from their rape statistics.

- The victim did not engage in any risk-taking behavior (drinking, using drugs, walking alone late at night, accepting a ride from a stranger) at the time of the incident.
- The victim did not have a motive to lie and did not make inconsistent statements during interviews.
- The victim did not report the crime immediately.
- The victim was able to identify the suspect by full name and address.
- The suspect (of those interviewed by police) either claimed that the victim consented or that the incident was fabricated.
- There was no physical evidence to corroborate the victim's allegations.
- There were no witnesses who could corroborate the victim's allegations.

In the sections that follow, we examine the cases cleared by exceptional means by the LAPD and the LASD in 2008. We begin with a discussion of each agency's practice of changing the case clearance from cleared by arrest to cleared by exceptional means if the District Attorney refuses to file felony charges. We then attempt to determine whether these cases meet the four criteria that are required for an exceptional clearance.

Table V.2. Sexual Assaults Cleared by Exceptional Means, LAPD and LASD, 2008

Case/Crime Characteristics	LAPD (N = 125)		LASD (N = 277)	
	N	%	N	%
Type of Crime				
Rape	92	73.6	193	70.2
Attempted rape	9	7.2	25	9.1
Sexual battery	24	19.2	22	8.0
Statutory rape/sex crime with a child	--	--	35	12.8
Suspect used bodily force only to subdue victim	101	80.8	229	82.7
Suspect used a weapon	9	7.2	27	9.7
Suspect drugged victim	6	4.9	23	8.6
Relationship between victim and suspect				
Strangers	26	20.8	57	20.8
Nonstrangers	63	50.4	145	52.9
Intimate partners	36	28.8	72	26.3
Victim injured	56	44.8	124	44.8
Victim also physically assaulted	58	46.4	101	36.5
Rape + stranger or weapon or injury to victim	49	39.2	113	40.8
Rape + stranger or weapon	18	14.4	57	20.6
<b>Victim Characteristics</b>				
<b>Background Characteristics</b>				
Age (mean)	25.7		28.7	
Race/Ethnicity				
Caucasian	42	33.6	65	24.8
Hispanic/Latina	54	43.2	122	46.6
African American	22	17.6	60	22.9
Asian American/Other	7	5.6	15	5.7
<b>Credibility Factors</b>				
Criminal record	16	12.8	13	4.7
Gang affiliation mentioned in report	2	1.6	2	0.7
Drinking at time of incident	45	36.0	70	25.5
Drunk at time of incident	39	31.2	46	16.8
Using illegal drugs at time of incident	10	8.0	20	7.3
Passed out (not drugged)	19	15.2	27	9.8
Prior sexual relationship with suspect <sup>a</sup>	37	45.7	63	40.1
Walking alone late at night	8	6.4	8	2.9
Accepted a ride from a stranger	4	3.2	8	2.9
Mental health issues	14	11.2	27	9.8
Sex worker	10	8.0	4	1.5
Inconsistent statements to police	25	20.2	29	10.5
No physical or verbal resistance	33	26.4	72	26.0
Verbal resistance only	20	16.0	55	19.9
Physical resistance only	15	12.0	21	7.6
Verbal and physical resistance	57	45.6	129	46.6
Investigating officer questions credibility	20	16.0	12	4.4

Table V.2, continued				
	LAPD (N = 125)		LASD (N = 277)	
	N	%	N	%
<b>Cooperation With Law Enforcement</b>				
Reported within one hour	29	23.2	33	11.9
Had a forensic medical exam	63	50.4	99	36.0
Declined forensic medical exam	7	5.6	12	4.3
Identified suspect by full name and address	75	60.0	170	61.4
Cooperative during police investigation	67	54.0	165	60.0
Recanted her allegation	5	4.0	10	3.6
Could not be located	20	16.0	38	13.8
Had a motive to lie	32	25.6	23	8.4
<b>Suspect Characteristics</b>				
Affiliated with a gang	10	8.0	30	10.8
Police interviewed suspect	72	57.6	121	43.7
Defense in statement to police <sup>b</sup>				
Consent	37	51.4	50	42.0
Incident fabricated	29	40.3	53	44.5
Incorrect ID	1	1.4	--	---
Admitted/Confessed	5	6.9	16	13.4
<b>Police Investigation/Evidence</b>				
Some type of physical evidence	53	42.4	103	37.2
Mean number of police interviews of victim	1.95		1.79	
Mean number of witnesses	0.60		0.77	
Police interviewed witnesses <sup>c</sup>	43	78.2	92	87.6
Police conducted pretext phone call	12	9.6	13	4.7

<sup>a</sup> Of cases involving nonstrangers and intimate partners

<sup>b</sup> Of the identified suspects who spoke with the police.

<sup>c</sup> Of the cases with witnesses where the suspect spoke to the police.

## EVALUATING EXCEPTIONAL CLEARANCES

As noted above, in order to clear a case by exceptional means, a law enforcement agency must be able to identify the suspect and must know the suspect's exact location so that s/he could be arrested. In addition, there must be enough evidence to support the police officer's decision to arrest and charge the suspect and to turn him/her over to the court for prosecution, as well as something beyond the control of law enforcement that prevents law enforcement from arresting

and charging the suspect with a crime. Moreover, *each* of these four criteria must be met in order to exceptionally clear the case.

**The Mutual Exclusivity of Arrest and the Exceptional Clearance.** We began this project with an assumption that cases in which the police or sheriff’s department makes an arrest would be categorized as *cleared by arrest*. However, Table V.3, which presents data on 2008 cases reflecting the criteria for clearing a case by exceptional means, reveals that both agencies clear cases by exceptional means when the suspect is arrested but the prosecutor declines to file charges. There were 40 such cases (32% of all exceptional clearances) in the LAPD sample and 53 (19.9% of all exceptional clearances) in the LASD data. In other words, upon making the arrest the case is cleared by arrest, but if the DDA reviewing the case declines to file charges, the case clearance is changed from cleared by arrest to cleared by exceptional means.

Criteria for Exceptional Clearance	LAPD (N = 125)		LASD (N = 267) <sup>a</sup>	
	N	%	N	%
Suspect identified and can be located	121	96.8	191	71.5
<i>Suspect not arrested, DA said insufficient evidence</i>	55	44.0	77	28.8
<i>Suspect not arrested, victim refused to cooperate</i>	26	20.8	61	22.8
<i>Suspect arrested but DA declined to file charges</i>	40	32.0	53	19.9
Suspect not identified or cannot be located	4	3.2	76	28.4

<sup>a</sup> There were 10 LASD cases with missing data; therefore, the number of cases is 267 rather than 277.

Analyzing the origins of this dynamic highlights the need for the FBI to clarify and refine aspects of the UCR<sup>33</sup> program. First, as Feeney (2000-2001) noted in his discussion of the development of the Uniform Crime Reporting system, to clear by arrest requires a booking procedure *by the police*, which leaves the suspect subject to the court’s discretion as to

<sup>33</sup> The need for revisions to the UCR program specific to the significant positive impact it would have on the investigative efforts of local police and sheriffs’ departments in sexual assault cases was an important focus of discussion during the September 2010 Senate hearing. See Tracy (2010: 7-10) for an overview of the efforts to facilitate change at the federal level, along with Berkowitz (2010: 9-10) and Dempsey (2010: 5-9).

prosecution. Although use of the term “charged” has generated some confusion among law enforcement agencies as to whether it is the police or the prosecutor who must file charges, the UCR handbook clearly states that the exceptional clearance is to be used when the suspect’s identification and location is known, there is enough evidence *to justify the arrest and prosecution* of the offender, but for reasons beyond police control they are *unable* to make an arrest (UCR Handbook, 2004: 80-81). Stated simply, if an arrest is made, the case is to be cleared by arrest. Thus, these cases should have remained cleared by arrest.

As noted earlier, the (mis)use of the exceptional clearance when a suspect is arrested but the district attorney refuses to file charges is based on an LAPD policy that a case can be cleared by arrest only if felony charges are filed; in contrast, the LASD policy is consistent with UCR guidelines but the policy is not always followed by LASD detectives. The fact that the LAPD clears a case by arrest only if felony charges are filed by the district attorney means that—practically speaking—their arrest practices are based upon a *prosecutorial standard of proof beyond a reasonable doubt*, rather than the *police standard of probable cause*.

In the following sections, we discuss the four criteria that must be met to exceptionally clear a case, beginning with an identified suspect and a known location for that suspect.

**Criteria Required for Clearing by Exceptional Means.** The first two criteria for clearing a case by exceptional means are straightforward and objective. There must be an identified suspect and knowledge of the exact location where the suspect can be found. Therefore, all of the cases that were cleared in this way should, by definition, meet these criteria. As shown in Table V.3, there were only four cases (3.2%) in the sample of exceptionally cleared cases from the LAPD in which the suspect was either not identified or was identified but his location was not known. In contrast, of the 2008 cases exceptionally cleared by the LASD, 76



(28.4%) were cases in which the suspect was not identified or could not be located; 43 (15.5%) were cases without an identified suspect and 33 (12.9%) were cases in which an identified suspect could not be located. The fact that more than one fourth of the LASD cases cleared by exceptional means did not meet these basic criteria means that they are using this clearance category inappropriately in a substantial number of cases. Applying just the first two criteria articulated by the UCR Handbook suggests that these cases (4 LAPD cases and 76 LASD cases) should not have been cleared; they should have remained open until a suspect was identified and his/her location established.

The third and fourth criteria required to exceptionally clear a case pertain to the sufficiency of the evidence needed to clear a case this way and the inability of the police to clear the case by making an arrest. To reiterate, the UCR Handbook (2004: 80-81) states that to exceptionally clear a case, there must be *enough information* to support arresting, charging, and turning the suspect over to the court for prosecution, as well as something *beyond the control of law enforcement* that prevents them from arresting the suspect. In other words, the police have probable cause to make an arrest but are prevented from doing so by something beyond their control—the suspect has died, is being prosecuted for another crime in a different jurisdiction, or cannot be extradited or the victim refuses to cooperate in the prosecution of the suspect.

Determining whether the sexual assault cases cleared by exceptional means by the LAPD and the LASD meet these two criteria is complicated by the fact that there is no objective indicator in the case file of whether the investigating officer had probable cause to make an arrest. We do not know, in other words, whether the officer had sufficient evidence to make an arrest and cleared the case exceptionally when s/he was unable to arrest the suspect or whether the officer simply presented a weak case (i.e., a case without probable cause to make an arrest) to

a deputy district attorney for a pre-arrest filing decision and cleared the case exceptionally when the DDA decided that the case did not meet the office filing standard of proof beyond a reasonable doubt.

Determining whether the cases meet these criteria is also complicated by the fact that the UCR Handbook does not precisely define what is meant by “reasons outside the control of law enforcement that prevent arresting, charging, and prosecuting the suspect.” As noted earlier, the Handbook provides a list of possible situations, many of which involve the death of the suspect, that meet this criterion. The ten examples provided, which the Handbook acknowledges are not exhaustive, include refusal of the victim to cooperate in the prosecution of the suspect but do not include a prosecutorial declination to file charges because of insufficient evidence, which, as we explain below, is the most common reason given by LAPD and LASD investigating officers for clearing a case by exceptional means. In short, if the agency has an identified suspect and probable cause to make an arrest, the agency should clear the case by arrest as it is within their control to arrest, charge, and turn the suspect over to the district attorney for prosecution. To do otherwise is not only counter to the FBI’s guidelines, but it becomes an avenue through which to prematurely dispose of the nonstranger sexual assault cases which, as discussed above, are the most common type of sexual assault and require specialized investigation to overcome the consent defense.

Although we cannot determine whether the officer investigating the crime had probable cause to make an arrest, we can evaluate the reasons given by the officer for clearing the case by exceptional means, as these are documented in the case files. Of the 121 LAPD exceptionally cleared cases in which the suspect was identified and his location known, 55 (44%) were cases in which the prosecutor stated that there was insufficient evidence to try the case before a jury and

26 (20.8%) were cases in which the victim did not want to cooperate in the prosecution of the suspect (the remaining 40 cases (32%) were cases in which the police did make an arrest but the case was exceptionally cleared when the DA declined to file felony charges). Of the 191 LASD cases, 77 (28.8%) involved a prosecutorial assessment that the evidence was insufficient and 61 (22.8%) involved a reluctant victim (the remaining 53 cases (19.9%) were cases in which sheriff's deputies did make an arrest). In other words, the exceptionally cleared cases in both agencies most often involved a prosecutorial assessment of insufficient evidence, followed by the victim declining to cooperate with the prosecution. Although they are not mutually exclusive and can occur simultaneously, we address prosecutorial assessments of evidence first, followed by victim cooperation.

**Exceptional Clearances Based on Insufficient Evidence.** In order to analyze exceptional clearances that occur when a prosecutor declines to file charges it is important to understand what prosecutors need to file charges in sexual assault cases; that is, how much legally admissible evidence is sufficient to prove the defendant's guilt beyond a reasonable doubt in front of a jury. As noted earlier, deputy district attorneys interviewed for this project stated that the pre-arrest charge evaluation process determines whether the evidence amassed by law enforcement at the time of screening justifies prosecution, or whether additional investigation is required before the suspect can be arrested and turned over to them for prosecution. When asked what they needed to file felony charges, prosecutors unanimously stated that office policy requires corroboration of the victim's allegations, especially in "she said/he said" cases in which the suspect and victim are nonstrangers.<sup>34</sup> Corroboration was described as some form of

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<sup>34</sup> Interestingly, all prosecutors interviewed for this study agreed that stranger cases are *incredibly* rare; their prototypical cases involve either adult acquaintances or children molested by family members or other known authority figures or acquaintances. The major difference between adult and child cases, many noted, is that jurors/society inherently trust child victims yet are inherently *distrusting* of teenage and adult female victims.

documentation independent of the victim’s word that “the jury can look at” and that substantiates her claims: vaginal or anal trauma, eyewitnesses, bodily injuries, ripped clothing or other signs of force at the crime scene, phone records, security camera video, a fresh complaint witness,<sup>35</sup> a pretext<sup>36</sup> phone call, or a 911 call from the victim or a witness. One respondent summed up corroboration as “pieces of evidence that couldn’t be explained unless the victim was victimized.”

In reference to the avenues for acquiring such evidence, prosecutors remarked on the need to “Ask the right questions to get the whole story and look for corroboration in those little points. If the victim said ‘I was afraid and I called my mother,’ get the phone records.” Prosecutors also spoke of the need to examine the suspect’s history—prior relationship partners, friends, acquaintances, and family who can speak to behavioral patterns—and criminal record—including crime reports and arrests, not just convictions. They emphasized the importance of these types of evidence, which could be used to demonstrate the suspect’s propensity towards aggressive behavior, sexual or otherwise. Also of importance, they noted, are such things as the suspect’s post-assault behavior in terms of attempts to contact the victim, activity on social media websites such as Facebook, and, perhaps most importantly, whether the suspect made any incriminating admissions to the police.

According to both detectives and prosecutors, one of the biggest challenges in obtaining corroborative evidence is delayed reporting of the assault. The problem with delayed reporting is that any injuries from the assault will likely be healed and witnesses may no longer be available;

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<sup>35</sup> Someone the victim discloses to and/or interacts with after the assault who can speak to behavior, appearance, or some other issue that is consistent with the allegations.

<sup>36</sup> Pretext phone calls involve the police recording the victim calling the suspect to discuss what transpired with the goal of obtaining incriminating statements. Detectives and prosecutors repeatedly emphasized the importance of doing a pretext phone call in nonstranger cases.

delayed reporting also drastically decreases<sup>37</sup> the probability of retrieving any biological evidence from either the victim's body (crime scene number one) or the actual crime location (crime scene number two). Notably, detectives and prosecutors who reported receiving the most training and expressed the most job satisfaction commented that delayed reporting is the *norm* and is to be expected in all types of sexual assault cases, regardless of the victim's age. Given the ubiquity of delayed reporting, especially in nonstranger sexual assaults, they emphasized the critical importance of specialized training in *interviewing* victims and *interrogating* suspects. For example, a detective in a specialized unit made the following observation:

The DA's office needs as much training as we do. I did a presentation about trauma and interviewing and most of those attending were DA's. Their reviews were more enlightening to me than the detectives.' Their eyes were opened in terms of interviewing a traumatic victim. We're so used to interviewing the day it happened. With sexual assault you have to go backwards and do a comprehensive cognitive interview because memory fails with trauma. VIP training is specialized but there are times where you will get a DA who screens these cases and closes the door. They are in the law enforcement family and they stick together and defend their own even when they're wrong as we do.

Formal policies requiring proof beyond a reasonable doubt and corroboration of the victim's testimony prior to filing can, of course, be loosened, or even circumvented, as a result of *informal* norms on charging that reflect the discretion accorded to individual prosecutors and the varying supervisory styles at courthouses throughout the county. As one prosecutor stated, "The reality of what happens is different than what policy dictates. Many DA's do not file when they are not easy cases."<sup>38</sup> Along similar lines, another prosecutor stated, "If I thought it was an absolutely righteous case and there was anything to corroborate what the witness said and I was unsure what a jury would do, but I thought I could do it, then I would file." It is also important to

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<sup>37</sup> Sexual Assault Nurse Examiners now conduct forensic evidence collection up to 96 hours after an assault, whereas standard practice previously was up to 72 hours post-assault (G. Abarbanel, Personal Communication, November 9, 2010).

<sup>38</sup> Echoing this sentiment, another prosecutor stated: "There is a wide range of DDA interpretation as to what sufficient evidence will result in a conviction. I will say this because it is anonymous that there are people who are attracted to sex crimes because you can get high sentences and they reject ones that are not a slam dunk."

consider these issues in relation to the police decision to arrest, along with how a detective's perceptions and handling of a sexual assault report sends a message to the prosecutor about the "righteousness" of a case. For example, a prosecutor stated that "usually when they bring in a case we'll ask 'is it a filing or a reject?' They'll often say 'a reject.'" Additionally, a detective who had just come from doing a case "drop off" at the DA's office prior to being interviewed for this study reported feeling pleasantly surprised that the DA filed charges in the case because she was sure it would be rejected. The detective attributed the filing to having made the effort to speak to the prosecutor *in person* rather than just sending the case file over by facsimile.

Given the frequency of references to it, perhaps the most important underlying factor is how police and prosecutors evaluate the victim's believability and credibility. Most respondents emphasized that their evaluation of the strength of evidence in the case was closely linked to their assessment of the victim's credibility and some prosecutors stated that they would file charges in a weak case if they believed that the victim was credible. This is evidenced by the following statement from a prosecutor:

Do I file things I think will be hard to prove? Yes. If I interview a victim I find incredibly compelling and there's a richness to the detail, a believability and ring of truth to how she describes things then I will file it explaining to her that the odds are really low and is she still willing to go forward. I tell her we have problems here and we could very well lose. If I have a go ahead from the victim then I will go forward. It's all about the victim. She is on trial. All the legislation we have about not revictimizing the victim, but at the end of the day we are putting her on trial; why she wore what she wore, went where she did, and so on. She is being judged.

Along similar lines, another prosecutor commented by way of the following analogy:

There is a double standard in these cases that I try to explain to jurors. For example, I am driving in my car and I realize that I am short of cash and need to go to the ATM. I pull up to an ATM and see that there are scary looking gang members standing outside of the ATM. Although I am nervous, I need money so I park and go to the ATM and I subsequently get robbed. Do we not arrest the suspects because I should have known that might happen and thus should not have gone to the ATM?

Although interviewees repeatedly emphasized the serious nature of rape, they focused most often on suspects and their own apprehensions around making arrests and filing criminal charges, rather than the consequences of victimization for rape survivors and the subsequent impact on their behavior during a criminal investigation. For example, a prosecutor commented that “We are supposed to interview the victims pre-arrest to determine credibility and gather other information that would help strengthen our case, although it does not happen every time. Sometimes they arrest the suspect and bring the case to us after the arrest but that is rare.” This suggests that law enforcement officials believe that it is important to assess the victim’s credibility before taking action against a suspect. The law enforcement officials interviewed for this project also emphasized that rape is unique because, of the two crimes (rape and homicide) deemed to be the most serious, it is the only one in which there is a *live* victim who makes or breaks the case. Given this reality, then, it is critical that the way in which information is obtained from victims does not create any further complications for what is already a difficult crime to prosecute. For instance, a prosecutor noted:

The problem with police and prosecutors is that we ask different types of questions so reports based on our interviews may *appear to be inconsistent* but in reality it is an artifact of questioning. Everything is discoverable so any interviews with the victim prior to trial the defense gets. For example: the victim tells the detective ‘he touched me.’ The detective writes ‘victim said suspect penetrated me with his finger.’ Those are two different charges. I have to ask for clarification and now this becomes two different statements (the officer interpreting it as penetration and me clarifying) and it makes the victim look like a liar, which undermines her credibility.

In summary, filing decisions in sexual assault cases are based on prosecutorial assessments of the sufficiency of the evidence, which vary depending on the depth and quality of the detective’s investigation, the prosecutor’s perceptions of victim credibility, and the available corroboration. Upon being presented with a case, if a prosecutor decides that sufficient evidence

exists and the police have not already arrested the suspect (and cleared the case by arrest), s/he will issue a warrant and the police will arrest the suspect, clear the case by arrest, and from there the prosecutor takes over. Conversely, if the prosecutor decides that the evidence as it currently stands is insufficient, s/he will either outright reject the case, or, reject it for further investigation. It is at this point that some detectives clear the case exceptionally, although other detectives stated that the case should be kept open and investigated further.

The importance of this juncture in an investigation cannot be underestimated given that the police retain the authority to gather more evidence and present the case again (Riedel & Boulohanis, 2007), whereas prosecutors cannot work with a case that never comes before them, and will be less inclined to take on a case that, on paper, is unclear, inconsistent, and raises doubts about the victim's credibility. By the time a victim is interviewed by the district attorney's office s/he has already been interviewed *at least twice* by the police, by a patrol officer and by a detective. In other words, rapport—good or bad—is already established. Nevertheless, the power of the police notwithstanding, the findings from this study indicate that prosecutors are equally—if not more—powerful players in this process, especially given the informalities of their interdependent relationship with law enforcement and the subsequent impact on the extent to which the police investigate allegations of sexual assault.

**Exceptional Clearance Based on Lack of Victim Cooperation**. A situation in which the victim refuses to cooperate in the prosecution of the suspect is listed an example of a case that might be cleared by exceptional means, provided that the other three criteria are met. All of the LAPD and LASD cases that were exceptionally cleared because the victim refused to cooperate were cases with identified suspects whose locations were known. Further analysis of these cases (for both agencies combined) revealed that two-thirds of them were “simple rapes”



(Estrich, 1987) that did not involve strangers, weapons, or visible injuries to the victim. In terms of relationship, 62.1 percent of the cases involved nonstrangers and 26.4 percent involved intimate partners. In almost all of the cases (95.4%) the victim did not report the crime within one hour; in fact, in about 70 percent of the cases the victim did not report the crime within 24 hours and in 21.8 percent of the cases the victim waited one month or longer to report the crime to the police. Interestingly, the police did not interview the suspect in 70.1 percent of these cases. Perhaps these victims decided that they did not want to cooperate in the prosecution of the case because they did not view themselves as “genuine victims” (LaFree, 1989), they were not attacked by strangers wielding guns or knives, and they waited at least one day before reporting the crime to the police.

Given the salience of victim cooperation to the success of a case, we asked sexual assault survivors about the decision to report to police and their experiences with the criminal justice system. One woman who was raped in her home by a stranger while her boyfriend was tied up and forced to watch offered the following:

I wish their communication was better. I saw the rapist’s face twice but when police asked me about the sketch they kept asking me more questions, which I couldn’t answer. I needed them to stop pressing me but they kept asking questions about the incident. The police had no clue how to talk to me, especially as the rape lasted five hours. I felt interrogated. They could have been more sensitive to the trauma. It’s all about the approach by the police.

The following reflections come from a woman whose experience was emblematic of the classic she said/he said scenario:

I was raped two years ago at a New Year’s Eve party so I knew everyone there, including my rapist. I was pretty drunk and this guy who I’d known since I was five asked me to follow him to another room where he pushed me on the bed and I passed out. There were injuries to my arms, face, and I was incredibly sore. I’d never passed out before. A friend found me passed out on the bed and the rapist ran out. I reported the following day at night. There were several hours in-between. I never remembered being

raped. I remember trying to fight him off and my next memory is of my friends holding my hair and I'm vomiting. I woke up the next morning thinking I had not been raped but there was a pain in my vagina and then I realized what happened. I talked to my mother and she noticed I wasn't wearing tights or underwear. I spent the whole day deciding whether to report or not. I decided to tell my father who wouldn't be able to stand it if there was no justice so he called the police, who came to my house. Three police cars showed up with their lights flashing. I was harshly interrogated by a male officer. The female officer present never said anything. The police officer was incredibly rude and harsh; well, not rude, harsh. Their main focus was that I was drunk and how drunk was I but they never considered if I was too drunk to consent...I gave a statement and again they fixated on how much I had drunk and moved towards blaming me because the rapist was someone I knew. The plan was to have me call him and to tape his call. It was a really stressful exercise. The rapist spoke with a lawyer and came in voluntarily to speak with the police. At that point they believed him because I was drinking a lot and they made the assumption it was consensual.

After a thoughtful pause she added:

One of the things that still bothers me is during the initial interrogation I was asked if I'd blacked out before and I said no and later in the investigation the facts were mingled and I was misquoted several times. They [the police] asked if I'd ever got physically ill from drinking and I told them yes, a dozen or so times when I was in college. Meanwhile my rapist was never arrested and charges [by the DA's office] were rejected because in the report it said that I'd been known to black out but this was inaccurate and not what I'd told them. I asked them to bring out the tape from the initial interrogation when I was told there was no tape and it wasn't recorded. My friends were at the party and could pinpoint people who were present at the party. I gave their contact info to police. And I kept asking if my rape kit had been processed. I was told there was no point in processing the rape kit once the rapist stated that sex had occurred.

When asked what she would do if someone disclosed a sexual assault to her and wanted advice about whether to report and cooperate with the prosecution she stated:

I would not report but if I knew who it was I would take revenge. I don't believe that reporting acquaintance rape does anything for the victim. I would express what happened to me but I would share my experience and that taking care of it yourself may give you results because my experience was so negative. I have lost a lot of friends over this. I haven't seen my rapist but I've seen his friends. Evidence from my case was going to be presented to another DA but I was frustrated and decided to just not think about it anymore so I gave up on prosecuting. The DA's office was looking for a slam dunk and my case wasn't a slam dunk.

The preceding reflections provide context to the decision not to cooperate with the prosecution as it relates to a victim's experience with the police, which sets the tone for subsequent interaction with the district attorney's office. Many of the victims, including those who were assaulted by strangers, reported not being believed and stated that their credibility was challenged by the police. For instance, consider the reflections from a woman who was kidnapped at gunpoint by a stranger during winter break at college. After being held hostage for almost twenty four hours she went to a local hospital in fear of being pregnant or having caught a sexually transmitted infection, which triggered a call to the police from the hospital staff:

They asked me if I wanted a woman police officer; I didn't care. A police officer is a police officer. I had never had any contact with the police. I didn't know they might treat you differently. Immediately they told me I was lying and on drugs. Straight up! 'You're on drugs.' My eyes were blood shot because I was so stressed and traumatized. [They kept saying] 'You're lying, you're lying! Stand up, close your eyes, and count to thirty. Can you count to thirty?' I got to thirty. Apparently they talked to my friends, because they were two guys. They said 'You put her up to this. You told her to do this for fun. You are all on drugs. Here is how it is: stop telling me this fairytale. Tell me the truth or you will personally go to prison for lying to a police officer. And I will send you to an all women prison so women could rape you.' I was stunned. Why was I defending myself? The victim shouldn't have to. The officer said most women would rather die than be raped. Then he told me at least three or four times to say I was lying and this won't go on further. He said we can drop this and forget all about it. For a moment I thought that maybe I should say that I was lying so I wouldn't have to deal with this anymore.

These statements indicate that despite the existence of rape law reform and victim advocacy, adult female sexual assault victims—whether assaulted by strangers or nonstrangers—continue to be met with scrutiny and distrust by both the criminal justice system and society at large (as represented by juries). Illustrating the salience of this specific to nonstranger sexual assault, a prosecutor commented that “General society still has an archaic perception that if a woman voluntarily goes with a man to have a drink and she is intoxicated—although no one wants to articulate it—there is still an idea that she is loose. I'm not sure if it is the job of the police or the district attorneys to change that, but it needs to happen.” Similarly, Temkin (2010

715) notes that false beliefs about rape are “so many and various” but some of the “most damaging” include the following: true rape is rape by a stranger; true rape takes place outdoors and involves physical violence against a victim who does all she can to resist; a woman can always prevent rape by fighting off her assailant; a woman can always withhold consent to sex now matter how drunk she is; women have only themselves to blame for rape because of their clothes, drinking habits, previous sexual relationships, and risky behavior; consent to sex can be assumed because of dress or certain types of behavior, such as flirting or kissing; and genuine victims report rape immediately, display great emotions when recounting the events in question, and always give a thoroughly consistent account.

The persistence of rape myths provides a context for understanding sexual assault case attrition in the criminal justice system because if police action is based on erroneous stereotypes about what rape is and what a “real” victim should do, victims whose cases fail to meet these criteria will not be given the respect, time, and investigative resources they deserve. The same logic applies to prosecutors. If erroneous stereotypes and misconceptions (cf., Frohmann, 1991; Gruber, 2009) cloud prosecutors’ perceptions of “real rape,” their course of action when presented with acquaintance rape—which, according to this study, is the prototypical type of rape seen in Los Angeles City and County—will inevitably fall short of the rights guaranteed by Marsy’s Law<sup>39</sup> to crime victims under the California Constitution.

## **CONCLUSION: THE MISUSE OF THE EXCEPTIONAL CLEARANCE**

The purpose of this analysis was to investigate law enforcement’s use (and misuse) of the exceptional clearance in sexual assault cases. A key finding is that both the Los Angeles Police

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<sup>39</sup> California Constitution, Article 1, § 28. Number One of the Sixteen Rights is “To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse throughout the criminal or juvenile justice process.”

Department and the Los Angeles Sheriff's Department clear a substantial number of cases by exceptional means. In fact, cases cleared by exceptional means accounted for more than half of all case clearances for the LASD and for a third of all case clearances for the LAPD. This clearly is inconsistent with Feeney's (2000-2001: 18) assertion that UCR guidelines (as articulated in early UCR handbooks) reflect an expectation that "most clearances would be based on arrests and that the number of exceptional clearances would be limited." For these two law enforcement agencies, exceptional clearances of sexual assault reports are common, not exceptional.

An important implication of this is that UCR data on "cases cleared by arrest" are misleading. Combining exceptional clearances with cases cleared by arrest resulted in 2005-2009 arrest rates for rape and attempted rape of 88.7 percent for the LASD and 45.7 percent for the LAPD, but the "true" arrest rates (i.e., the percentage of cases that were cleared by the arrest of a suspect) were only 34.7 percent (LASD) and 12.2 percent (LAPD). Combining the two types of case clearances, in other words, substantially inflates the rates of "cases cleared by arrest" for each agency.

Our review of the pathways through which LAPD and LASD sexual assault detectives clear cases by arrest or exceptional means revealed that the exceptional clearance is being used too frequently—and in some cases, inappropriately—in sexual assault cases. Myths and stereotypes about adult female<sup>40</sup> rape victims and what constitutes "real" rape continue to influence police and prosecutorial efforts in these cases. Implications for policy and practice are discussed in Section XI.

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<sup>40</sup> Several prosecutors noted anecdotally that male rape victims are not received with the same distrust and skepticism as female rape victims, and the few cases they were aware of involving male victims were fully prosecuted.

## **SECTION VI**

### **THE CORRELATES OF CASE OUTCOMES**

In this section we present the results of our quantitative analysis of case outcomes. We focus on the police decision to unfound the charges, the police decision to make an arrest, and the prosecutor's decision to file charges. All of our analyses are limited to cases of rape and attempted rape (including cases of oral copulation, sodomy, and penetration with an object); cases in which the most serious charge was sexual battery are excluded. Our analysis of the decision to unfound is limited to cases reported to the LAPD; this is because, as noted in Section IV, the LASD unfounded only 8 cases in 2008.

We begin with a discussion of the independent variables included in the models of case outcomes.<sup>41</sup> This is followed by the presentation of results from the quantitative analyses. See earlier sections of this report for a discussion of the process of clearing cases in the two jurisdictions and the standards used by the district attorney in deciding whether to file charges or not.

#### **MODELING CASE OUTCOMES**

From the 2008 case files, we collected data on more than 250 independent variables (see Section III for descriptive data on many of these variables). For the analysis of case outcomes, we selected independent variables for which there was little, if any, missing data and which prior research identified as relevant to case processing decisions in sexual assault cases. The victim characteristics include the victim's age, race/ethnicity, relationship with the suspect, whether the

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<sup>41</sup> As noted in Section I, the case files were coded by the two co-principal investigators and by a graduate student who was trained by the co-principal investigator at California State University, Los Angeles. During the process of coding the case files, we had numerous conference calls in which we discussed how to code particular variables.

victim engaged in any risk-taking behavior at the time of the incident, and whether the case file indicated that the victim had characteristics that would make police and prosecutors question her credibility. The victim's age is a continuous variable that ranges from 12 to 99 (mean = 26.03). The victim's race/ethnicity is measured by four dummy variables (white, black, Hispanic, other); in all of the analyses white victims are the reference category. The relationship between the victim and the suspect is measured by three dummy variables (intimate partner, nonstranger, stranger); cases involving victims and suspects who were strangers are the reference category. The risk-taking variable is coded 1 if the case file indicated that at the time of the incident the victim either was walking alone late at night, accepted a ride from a stranger, voluntarily went to the suspect's house, invited the suspect to her residence, was in a bar alone, was in an area where illegal drugs were sold, was drinking alcohol, was drunk, was using illegal drugs, or had passed out after drinking alcohol and/or using illegal drugs. We use this composite variable, rather than the individual risk-taking variables, because of the small number of victims who were engaged in any of these types of risky behavior at the time of the incident. Of the cases in which the most serious charge was rape or attempted rape, 39.1 percent (N = 254) involved some type of risk-taking behavior, typically walking alone late at night or drinking alcohol.

The character/reputation variable is also a composite of several factors that might lead officials to question the victim's credibility. This variable was coded 1 if there was information in the case file indicating that the victim had a pattern of alcohol abuse, had a pattern of drug abuse, had a disreputable job (e.g., stripper, exotic dancer), was a prostitute, or had a criminal record. There were 108 cases (16.6%) with one or more of these character issues. We also control for whether there was information in the case file to indicate that the victim had a mental

illness or mental health issues (yes = 1; no = 0)<sup>42</sup> or to indicate that the victim that the victim had a motive to lie about being sexually assaulted (yes = 1; no = 0).<sup>43</sup>

Our models also include a number of indicators of the seriousness of the sexual assault. We control for whether the most serious charge was rape (which for these analyses includes oral copulation, sodomy, and penetration with an object) rather than attempted rape, as well as for whether the suspect used some type of weapon during the assault (yes = 1; no = 0), and physically as well as sexually assaulted the victim (yes = 1; no = 0). We also include a variable that measures whether the victim suffered some type of collateral injury (e.g., bruises, cuts, choke marks) during the assault (yes = 1; no = 0); this information was obtained from the forensic medical report of the sexual assault examination (if there was an examination), from the responding officer's description of the victim's physical condition, and/or from victim's statements in the case file. Finally, we control for whether the victim verbally or physically resisted the suspect using a series of dummy variables (no verbal or physical resistance, verbal resistance only; physical resistance only; both verbal and physical resistance); no verbal or physical resistance is the reference category.<sup>44</sup>

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<sup>42</sup> This variable was coded 1 if the case file indicated that the victim was currently or had been in the past a patient at a mental health facility, that the victim was taking medication for a mental health problem, or if a family member or friend stated during an interview with the responding officer or the detective that the victim had a mental illness or mental health issues.

<sup>43</sup> Information about whether the victim had a motive to lie was obtained either from the victim's statement, the interview of the victim by the investigating officer, or the statement of witnesses. Examples of the types of statements found in the case file regarding the victim's motive to lie are the following: "all informants interviewed said the victim fabricated the incident because her parents found out she was sexually active," "victim was angry with suspect because he would not give her crack cocaine," "the victim was angry that the suspect returned to his wife," "the victim is involved in a custody dispute with the suspect," "victim was angry with suspect because he broke off the affair with her," "victim did not want her mother to find out what she did," "victim was cheating on her husband with the suspect," "suspect (victim's boyfriend) was flirting with another woman at a party," "suspect has nude photos of victim and victim found out that suspect has another girlfriend," "the girls were afraid that they would get in trouble for coming home late."

<sup>44</sup> The type of resistance was obtained from the victim's statement, which was recorded in the case file. We originally coded six types of verbal resistance (cried, screamed, refused/protested/said stop, attempt to dissuade/fool, calls names/denigrates suspect, passive/saying nothing) and five types of physical resistance (fled/attempted to flee, resisted/struggled, fought (hit, scratched, bit), used a weapon to defend, passive/did nothing to resist). Because there could be multiple types of verbal and physical resistance, we coded verbal resistance 1 if the case file indicated that



We control for several variables that measure the strength of evidence in the case. The first is whether the victim made a prompt report (yes = 1; no = 0), which we define as a report within one hour of the incident. We also include controls for the number of witnesses to the alleged assault and for a dichotomous indicator of whether the victim was willing to cooperate after the investigation of the case began (yes = 1; no = 0).<sup>45</sup> Our final evidentiary factor is a composite measure that is coded 1 if any of the following types of evidence were collected from the victim or from the scene of the incident: fingerprints, blood, hair, skin samples, clothing, bedding, or semen.

To control for the possibility that case outcomes differ between the LAPD and the LASD, our analyses of the decision to arrest and the decision to charge include a variable indicating whether the case was reported to the LAPD (coded 1) or the LASD (coded 0). Because our analysis of the decision to unfound includes only cases reported to the LAPD, for this analysis we include a set of dummy variables measuring the bureau to which the case was reported (Central, South, Valley, West); West Bureau is the reference category.

## **THE DECISION TO UNFOUND THE CHARGES**

As discussed in more detail in Section III of this report, both the FBI and the International Associations of Chiefs of Police (IACP) have published policy statements on the decision to unfound the charges. For example, FBI guidelines on clearing cases for Uniform Crime Reporting purposes state that a case can be unfounded only if it is “determined through

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there was any type of verbal resistance; similarly, we coded physical resistance 1 if the case filed indicated that there was any type of physical resistance.

<sup>45</sup> Whether the victim was willing to cooperate with the detective assigned to the case was determined from the case file. If the victim was uncooperative, it would be noted in the file by the investigating officer (IO). For example, the IO might have noted that he/she had attempted to contact the victim but the victim refused to talk to him/her (either via telephone or in person), that the victim stated that she did not want anything to happen to the suspect/that she did not want the suspect arrested, that the victim said (for a variety of reasons) that she did not want to take the case to court, that the victim stated that she was no longer interested in pursuing a criminal prosecution, or that the victim refused to participate in a pre-filing interview with the district attorney’s office.

investigation to be false or baseless” (UCR Handbook, 2004: 77). The Handbook also stresses that police are not to unfound a case simply because the complainant refused to prosecute or they are unable to make an arrest. Similarly, the IACP (2005) policy on investigating sexual assault cases states that “the determination that a report of sexual assault is false can be made only if the evidence establishes that no crime was committed or attempted” and that “this determination can be made only after a thorough investigation” (p. 12). Both sources, in other words, emphasize that the police must conduct an investigation and that their investigation must lead them to a conclusion that a crime did not occur.

The results of our analysis of the decision to unfound the charges are presented in Table VI.1. The dependent variable is a dichotomous measure of unbounding that is coded 1 if the LAPD unfounded the charges and 0 if the investigation was continuing, the case was cleared by exceptional means, or the case was cleared by arrest. In addition to the variables described above, our model includes a dichotomous variable that indicates whether the victim recanted her testimony (coded 1) or not (coded 0). Together, the victim characteristics, measures of case seriousness, evidence factors, and the LAPD Bureau to which the sexual assault was reported explain 66 percent of the variance in the unbounding decision.

Not surprisingly, the strongest predictor of the likelihood of unbounding was whether the victim recanted her testimony; the odds of unbounding were 305 times greater if the victim recanted. Several other victim characteristics also predicted the likelihood of unbounding. The report was more likely to be unfounded if the victim alleged that she was assaulted by a stranger than if she reported that she was assaulted by an intimate partner. This is not surprising, given that complainants who file false reports are more likely to report being assaulted by strangers; they apparently believe that their allegations will be viewed as more credible if they conform to

stereotypes of “real rape.” Also not surprising is that fact that unfounding was nearly 10 times more likely if the victim had a mental illness or mental health issues that called her credibility into question. Finally, the LAPD was three times more likely to unfound the charges if there was information in the case file that raised questions about the victim’s character or reputation.

Table VI.1 The LAPD’s Decision to Unfound the Charges: Results of the Logistic Regression Analysis

	B	SE	Exp(B)
<b>Victim Characteristics</b>			
Age	.010	.02	1.01
Race/Ethnicity			
Black	.511	.67	1.67
Hispanic	-.170	.61	0.84
Relationship to Suspect			
Intimate partner	<b>-2.68*</b>	.82	0.07
Nonstranger	-.680	.55	0.51
Risk-Taking Behavior at Time of Incident	.556	.53	1.74
Questions about Character/Reputation	<b>1.14*</b>	.53	3.14
Mental Illness or Mental Health Issues	<b>2.287*</b>	.69	9.85
Motive to Lie	-.004	.66	0.99
Victim Recanted	<b>5.72*</b>	.98	305.20
<b>Indicators of Case Seriousness</b>			
Most Serious Charge is Rape	.891	1.04	2.43
Suspect Physically Assaulted Victim	-.403	.53	0.67
Suspect Used a Weapon	-.008	.87	0.99
Victim Suffered Collateral Injury	<b>-1.074*</b>	.52	0.34
Type of Resistance			
Verbal only	-.562	.53	0.51
Physical only	-2.182	1.22	0.11
Verbal and physical	.190	.58	1.21
<b>Strength of Evidence</b>			
Victim Reported within One Hour	.229	.58	1.26
Number of Witnesses	.335	.20	1.40
Victim Willing To Cooperate in Investigation	.003	.47	0.60
Physical Evidence	<b>-1.299*</b>	.52	0.27
LAPD Bureau			
Central	-.256	.72	0.74
South	-1.022	.76	0.36
Valley	.494	.66	1.64
Constant	-2.103	1.59	
Nagelkerke R <sup>2</sup>	.656		

\*P ≤ .05 (significant coefficients are indicated in bold)

The only other variables that affected the likelihood of unounding were whether the victim suffered some type of collateral injury and whether there was any physical evidence collected during the investigation. Unounding was less likely if the victim was injured and if there was physical evidence. Both injury to the victim and physical evidence serve to corroborate the victim's allegations and therefore make it less likely that the detective investigating the case will believe that the victim fabricated the incident.

Because we believed that some of the independent variables would have both direct effects on the likelihood of unounding and indirect effects on unounding through their effect on whether the victim recanted, we estimated a model of recantation that included all of the variables listed in Table VI.1. The best predictor of victim recantation was whether the victim had a motivation to lie ( $B = 2.778$ ;  $SE = .53$ ); recanting was 16 times more likely if the victim had such a motivation. In addition, victims who reported being assaulted by strangers were significantly more likely to recant than were victims who reported being assaulted by intimate partners ( $B = -1.413$ ;  $SE = .74$ ) or nonstrangers ( $B = -1.626$ ;  $SE = .60$ ). Thus, the relationship between the complainant and the suspect affected both the likelihood that the victim would recant (victims who said that they were assaulted by strangers were more likely to recant their testimony) and the likelihood that the case would be unounded (unounding was more likely if the victim reported being assaulted by a stranger than if the victim reported being assaulted by an intimate partner). In contrast, having a motive to lie did not have a direct effect on the likelihood of unounding, but was a strong predictor of the likelihood that the victim would recant the allegations. The implications of these findings are discussed in the conclusion of this section of the report.

## THE DECISION TO ARREST THE SUSPECT

Sexual assault cases can be cleared (or solved) for Uniform Crime Reporting (UCR) purposes either by the arrest of at least one suspect or by exceptional means. Cases that are not cleared are “open” cases in which the investigation is continuing. According to the UCR Handbook (2004: 79), “an offense is cleared by arrest, or solved for crime reporting purposes, when at least one person is (1) arrested, (2) charged with the commission of the offense, and (3) turned over to the court for prosecution.” To clear a case by arrest, in other words, the law enforcement agency must arrest and book a suspect and turn him/her over to the prosecuting attorney for a charging decision. Regarding exceptional clearances, the handbook notes that there may be occasions where law enforcement has conducted a thorough investigation, exhausted all leads, and identified a suspect *but is nonetheless unable to clear an offense by arrest*. In this situation, the agency can clear the offense by exceptional means, *provided that* each of the following questions can be answered in the affirmative (pp. 80-81):

Has the investigation definitely established the identity of the offender?

Is the exact location of the offender known so that the subject could be taken into custody now?

Is there enough information to support an arrest, charge,<sup>46</sup> and turning over to the court for prosecution?

Is there some reason outside law enforcement control that precludes arresting, charging, and prosecuting the offender?

Our analysis of the decision to arrest is complicated by the fact that both the LAPD and the LASD—and particularly the LAPD—interpret (misinterpret) the word “charged” in the UCR discussion of cleared by arrest to mean “charged by the district attorney.” Thus, cases in which an arrest is made but the district attorney declines to file charges are initially cleared by arrest but

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<sup>46</sup> This refers to a police booking procedure; not a prosecutorial filing decision (FBI Section Chief R. Casey, Personal Communication, January 14, 2011).

the clearance is changed to cleared by exceptional means when felony charges are not filed by the prosecutor. In coding case outcomes for the project, we created two variables for “cleared by arrest.” The first, *clearedarrest*, is coded 1 if the final case clearance was cleared by arrest. The second, *policearrest*, is coded 1 if a suspect was arrested, regardless of whether the district attorney filed charges, and is coded 0 if there was an exceptional clearance without an arrest or if the case was open and the investigation was continuing. We use this latter variable to analyze the decision to arrest or not, as it more accurately reflects police decision making. Cases that were unfounded by the police are excluded from the analysis, as are cases in which the most serious charge was sexual battery. We analyze all cases ( $n = 570$ ) reported to the LAPD and the LASD in 2008, and we include a control for the law enforcement agency that handled the report. There were 247 (43.3%) cases in which the police/sheriff’s department made an arrest and 323 (56.7%) cases that were either cleared by exceptional means or the investigation was continuing. We then partition the data by relationship type (stranger versus nonstranger) and estimate a separate model of the decision to arrest or not for each type of relationship.

**Analysis of the Full Sample.** The results of our analysis of the decision to arrest or not are presented in Table VI.2. As these data indicate, arrest decisions are based primarily on the relationship between the victim and the suspect, indicators of case seriousness, and measures of the strength of evidence in the case. In contrast, the decision to arrest or not is not based on the victim’s background characteristics, character, or behavior at the time of the incident.

Not surprisingly, arrest was more likely if the victim and the suspect were nonstrangers. Compared to cases in which the victim and suspect were strangers, police were 4.89 times more likely to make an arrest if the victim and suspect were intimate partners and 3.14 times more likely to make an arrest if the victim and suspect were nonstrangers (for example, relatives,

neighbors, co-workers, acquaintances). This no doubt reflects that fact that cases involving strangers are much less likely to have an identified suspect whose location is known and who can therefore be taken into custody. Of the cases involving victims and suspects who were strangers to one another, 49.4 percent had an identified suspect. In contrast, there was a known suspect in 89.5 percent of the cases involving nonstrangers and 97.7 percent of the cases involving intimate partners.

The likelihood of arrest also is affected by three indicators of case seriousness: whether the case involved a rape or attempted rape, whether the suspect used a weapon, and whether the victim suffered some type of collateral injury. Arrest was less likely if the most serious charge was rape; it was more likely if the suspect used a weapon and if the victim was injured. In addition, the odds of an arrest are influenced by the promptness of the victim's report, the victim's willingness to cooperate, and the availability of witnesses and physical evidence. The police were 5.6 times more likely to make an arrest if the victim was willing to cooperate in the investigation of the crime (this reflects the victim's willingness to cooperate after making the report and during the investigation by the detective to whom the case was assigned); they were 3.3 times more likely to make an arrest if the victim reported the crime within one hour. The likelihood of arrest also increased as the number of witnesses increased and if there was some type of physical evidence collected from the crime scene or from the victim or suspect.

Table VI.2 Results of the Logistic Regression Analysis of the Decision to Arrest: Full Sample

	B	SE	Exp(B)
<b>Victim Characteristics</b>			
Age	.002	.01	1.002
Race/Ethnicity			
Black	.002	.32	1.002
Hispanic	-.031	.27	0.97
Relationship to Suspect			
Intimate partner	<b>1.587*</b>	.34	4.89
Nonstranger	<b>1.145*</b>	.30	3.14
Risk-Taking Behavior at Time of Incident	-.195	.25	0.82
Questions about Character/Reputation	-.022	.32	0.98
Mental Illness or Mental Health Issues	-.337	.39	0.71
Motive to Lie	.304	.34	1.36
<b>Indicators of Case Seriousness</b>			
Most Serious Charge is Rape	<b>-1.022*</b>	.34	0.36
Suspect Physically Assaulted Victim	.360	.24	1.43
Suspect Used a Weapon	<b>.955*</b>	.34	2.60
Victim Suffered Collateral Injury	<b>.474*</b>	.23	1.54
Type of Resistance			
Verbal only	-.361	.36	0.70
Physical only	.133	.46	1.14
Verbal and physical	.416	.29	1.52
<b>Strength of Evidence</b>			
Victim Reported within One Hour	<b>1.197*</b>	.28	3.31
Number of Witnesses	<b>.353*</b>	.08	1.42
Victim Willing To Cooperate in Investigation	<b>1.72*</b>	.26	5.61
Physical Evidence	<b>.583*</b>	.24	1.79
Law Enforcement Agency			
LAPD	.110	.24	1.12
Constant	<b>-3.20*</b>	.66	
Nagelkerke R <sup>2</sup>		.40	

\*P ≤ .05 (significant coefficients are indicated in bold)

**Analysis of Data Partitioned by Relationship Type.** As noted in the previous section, the relationship between the victim and the suspect influenced the likelihood that the police would arrest the suspect; cases involving victims and suspects who were intimate partners or nonstrangers were significantly more likely to result in an arrest than were cases involving



victims and suspects who were strangers. To determine whether the factors that affect the likelihood of arrest varied by relationship type, the next step in the analysis was to partition the data by relationship type and estimate separate models of the likelihood of arrest for cases involving intimate partners, nonstrangers and strangers.

Table VI.3 Results of Logistic Regression Analysis of the Decision To Arrest: Data Partitioned by Relationship Between Victim and Suspect

	Strangers	Nonstrangers	Intimate Partners
<b>Victim Characteristics</b>			
Age	1.04	0.98	0.99
Race/Ethnicity			
Black	1.09	1.74	0.43
Hispanic	1.47	1.01	0.76
Risk-Taking Behavior at Time of Incident	1.75	0.80	0.35
Questions about Character/Reputation	0.96	1.14	0.87
Mental Illness or Mental Health Issues	0.23	0.49	0.67
Motive to Lie	1.40	1.22	2.27
<b>Indicators of Case Seriousness</b>			
Most Serious Charge is Rape	0.65	<b>0.21*</b>	0.41
Suspect Physically Assaulted Victim	1.00	1.88	1.19
Suspect Used a Weapon	2.65	2.36	<b>9.07*</b>
Victim Suffered Collateral Injury	2.49	0.98	<b>2.61*</b>
Type of Resistance			
Verbal only	0.34	0.52	1.62
Physical only	2.16	0.91	2.29
Verbal and physical	1.83	1.46	2.20
<b>Strength of Evidence</b>			
Victim Reported within One Hour	<b>3.60*</b>	<b>5.70*</b>	2.74
Number of Witnesses	<b>1.66*</b>	<b>1.56*</b>	1.16
Victim Willing To Cooperate in Investigation	3.20	<b>20.74*</b>	<b>2.36*</b>
Physical Evidence	0.79	<b>2.38*</b>	1.95
Law Enforcement Agency			
LAPD	0.86	1.32	0.98
Nagelkerke R <sup>2</sup>	.41	.52	.36
No. of Cases	131	262	159

\*P ≤ .05 (Coefficients presented are exp(B); significant coefficients are indicated in bold)

The results of our analysis are shown in Table VI.3. It is important to point out that none of the victim characteristics affected the likelihood of arrest for any of the three relationship types. Moreover, the indicators of case seriousness and evidentiary strength had differential effects on the three types of cases. Beginning first with the cases in which the victim and suspect were strangers, the odds of arrest were affected by only two variables—whether the victim made a prompt report and the number of witnesses to the incident. Arrest was 3.6 times more likely if the victim reported the crime within one hour and the odds of arrest increased as the number of witnesses increased.

Turning next to cases involving nonstrangers, the results of our analysis reveal that the strongest predictors of arrest are measures of the strength of evidence in the case. Arrest is significantly more likely if the victim of a nonstranger sexual assault is willing to cooperate with police and prosecutors during the investigation of the crime, if the victim reported the crime promptly, and if there are witnesses or physical evidence that can corroborate her allegations. In contrast, the likelihood of arrest in cases involving intimate partners is influenced by the seriousness of the crime—arrest is substantially more likely if the suspect used a weapon and if the victim suffered some type of collateral injury. In these cases, the willingness of the victim to cooperate in the investigation also has a positive effect on the odds of arrest.

## **THE DECISION TO PROSECUTE THE SUSPECT**

Our analysis of the decision to prosecute the suspect is complicated by the pre-arrest charge evaluation process used by both the LAPD and the LASD. Both agencies present a substantial number of cases to the district attorney for a charging decision prior to making an arrest. In many of these cases, the investigating officer has probable cause to make an arrest, but

delays making the arrest until the case can be evaluated by a deputy district attorney. If the prosecutor reviewing the case determines that the evidence against the suspect does not meet the standard of proof beyond a reasonable doubt, which is the standard required to file charges, s/he will reject the case for prosecution. Most of these cases are rejected for insufficient evidence and are subsequently (and inappropriately)<sup>47</sup> cleared by exceptional means by the investigating officer.

To account for the two contexts of charge rejections, we created a three-category variable: charges rejected before arrest; charges rejected after arrest; and charges filed. Included in the first category are cases in which the suspect was not arrested and the case was cleared exceptionally as a result of a rejection by the district attorney during the pre-arrest charge evaluation process. The second category includes cases in which the suspect was arrested but the district attorney declined to file charges<sup>47</sup> and the third category includes cases in which the suspect was arrested and the district attorney filed charges. In creating this variable, we excluded (i.e., coded as missing) cases (N = 267) that were unfounded, open cases in which the investigation was continuing, and cases that were exceptionally cleared but were not referred to the district attorney for a charging decision.

Considering cases from both law enforcement agencies, there were 383 cases in which the district attorney made a charging decision. Charges were filed in 31.6 percent (N = 121) of the cases; charges were rejected in 68.4 percent (N = 262) of the cases. Of cases that were rejected, 38.9 (N = 149) percent were rejected before the suspect could be arrested and 29.5 (N = 113) percent were rejected following the arrest of the suspect. If cases in which a pre-arrest

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<sup>47</sup> These cases are inappropriately cleared by exceptional means either because there is nothing beyond the control of law enforcement that prevents an arrest (i.e., the law enforcement agency has probable cause to make an arrest and therefore the decision to arrest is within their control), or because the law enforcement agency does not have probable cause to make an arrest (which is required to clear a case by exceptional means).

charging decision was made by the district attorney are excluded, the charging rate increases to 51.7 percent (113/234).

We analyze the trichotomous charging variable using multinomial logistic regression, which allows us to contrast cases in which the district attorney filed charges with (1) cases in which the district attorney rejected charges during the pre-arrest charge evaluation process and (2) cases in which the district attorney rejected charges after the suspect was arrested.

The results of our analysis, which are presented in Table VI.4, reveal that different variables affect the two indicators of charge rejection. Beginning with the prosecutor's decision to reject charges during the pre-arrest charge evaluation process, we see that the likelihood of charge rejection is determined by a mix of victim characteristics, indicators of crime seriousness, and measures of the strength of evidence in the case. Prosecutors were significantly more likely to reject charges in cases involving older victims, victims who engaged in some type of risky behavior at the time of the incident, and victims who both verbally and physically resisted the suspect. In fact, charge rejection during the pre-arrest charge evaluation process was nearly three times more likely if the victim had engaged in risk-taking behavior and was more than twice as likely if the victim resisted the suspect verbally and physically (as opposed to no resistance). The likelihood that the prosecutor would reject the charges during the pre-arrest charge evaluation process also was affected by the most serious charge and by suspect's use of a weapon; the prosecutor was seven and a half times more likely to decline to file charges if the most serious charge was rape rather than attempted rape and was substantially less likely to decline to file charges if the suspect used a gun, knife or other weapon during the commission of the crime. Charge rejection also depended on the strength of evidence in the case. Prosecutors were

Table VI.4. Charging Decisions in Rape and Attempted Rape Cases, LAPD and LASD, 2008: Results of the Multinomial Logistic Regression Analysis of Three-Category Charging Variable

	Charges Rejected Before Suspect Arrested			Charges Rejected After Suspect Arrested		
	B	SE	Exp(B)	B	SE	Exp(B)
<b>Victim Characteristics</b>						
Age	<b>0.04*</b>	.02	1.04	0.02	.02	1.03
Race/Ethnicity						
Black	-0.60	.49	0.55	-0.70	.47	0.50
Hispanic	-0.56	.39	0.57	-0.68	.38	0.51
Relationship with Suspect						
Intimate partner	0.40	.54	1.49	0.39	.49	1.48
Non-stranger	0.59	.49	1.80	0.17	.45	1.19
Risk-taking behavior	<b>1.02*</b>	.39	2.78	0.44	.36	1.55
Questions about character/reputation	0.86	.56	2.35	0.87	.54	2.38
Mental illness or mental health issues	1.07	.64	2.92	1.01	.64	2.73
Has a motive to lie	1.15	.61	3.15	<b>1.60*</b>	.59	4.97
<b>Indicators of Crime Seriousness</b>						
Most serious charge is rape	<b>2.02*</b>	.61	7.54	0.33	.45	1.40
Suspect physically assaulted victim	0.12	.36	1.13	.56	.35	1.76
Suspect used a weapon	<b>-1.78*</b>	.56	0.17	<b>-0.95*</b>	.45	0.38
Victim suffered collateral injury	-0.44	.34	0.65	-0.15	.33	0.86
Type of resistance						
Verbal only	0.07	.51	1.07	-0.22	.52	0.80
Physical only	-0.72	.75	0.49	-0.49	.68	0.61
Verbal and physical	<b>-0.88*</b>	.44	0.41	-0.62	.43	0.54
<b>Strength of Evidence</b>						
Victim reported within one hour	<b>-1.65*</b>	.47	0.19	-0.02	.35	0.98
Number of witnesses	<b>-0.27*</b>	.12	0.76	0.01	.10	1.01
Victim willing to cooperate	<b>-3.13*</b>	.57	0.04	<b>-2.25*</b>	.55	0.10
Physical evidence	<b>-0.87*</b>	.36	0.42	0.28	.35	1.32
<b>Case Handled by LAPD</b>						
Number of Cases	0.03	.36	1.03	-0.38	.35	0.68
Nagelkerke R <sup>2</sup>	371					
	.46					

\*P ≤ .05 (significant coefficients are indicated in bold)

significantly less likely to decline to file charges if the victim reported the crime within one hour, if the victim was willing to cooperate with law enforcement as the case moved forward, and if there was physical evidence recovered from the victim or from the scene of the crime. Finally, the likelihood of charge rejection decreased as the number of witnesses increased.

The results for the analysis of the decision to reject charges following arrest are very different. In fact, only three variables—whether the victim had a motive to lie, whether the suspect used a weapon during the commission of the crime, and whether the victim was willing to cooperate with the investigation—had a statistically significant effect on this indicator of charging. In cases in which a suspect was arrested and in custody, the odds of charge rejection were higher if the victim had a motive to lie about the incident; the odds were lower if the suspect used a weapon and if the victim was willing to cooperate with law enforcement officials.

**Examples of Cases Rejected Prior to Arrest of Suspect.** Because we had access to the 2008 case files, we were able to collect detailed qualitative data on cases that were presented to the district attorney before an arrest was made and that the district attorney subsequently rejected based on insufficient evidence and/or the victim's lack of cooperation and other factors. In the section that follows, we describe the characteristics of four of these cases, which we selected from both law enforcement agencies.

One case from the LAPD involved a 13-year-old victim who was a runaway and who stayed with various friends, all of whom, including the suspect, were gang members. One night the victim and a female friend were invited to a party at the residence of one of the gang members. The victim, who admitted drinking more than 10 beers and smoking marijuana while at the party, told the investigating officer that one of the males at the party offered to let her sleep on the fold-out couch in his living room. She stated that she fell asleep and awoke to find the

suspect on top of her. She said that the suspect touched her breasts, rubbed her buttocks, and penetrated her rectum. She said that she told the suspect that it hurt and that she told him to stop.

The victim's forensic medical exam revealed evidence of acute anal trauma and the suspect, who lied about his gang affiliation and who had a criminal record, was identified by the victim through a photo line-up. When the suspect was interviewed by the police, he denied assaulting the victim, saying that he went straight to bed after the party and that he shares a room with his father and that his father would confirm this. The suspect further alleged that the victim snuck into his house and slept in his living room without his knowledge. The suspect's father stated that the suspect returned home alone and that the victim was not in the house when he (the suspect's father) went to bed. Moreover, the victim told the investigating officer that her friend (a fresh complaint witness who also was a gang member) would not cooperate with law enforcement, and the detective told the district attorney that the victim stayed with the suspect for two days after the alleged assault.

Despite evidence that the victim had been sexually assaulted (in fact, the SART nurse noted that "sexual abuse is highly suspected"), the district attorney screening the case rejected it for insufficient evidence. On the charge evaluation worksheet, the district attorney noted:

Victim is a runaway who gives inconsistent and unlikely versions of *her adventures*. *No evidence* of any assault taking place. Defendant has a witness that corroborates his version (emphasis added).

The fact that the prosecutor used the phrase "her adventures" to describe the victim's behavior on the night of the alleged sexual assault and stated that the victim's testimony is both inconsistent and unlikely indicates that the prosecutor was concerned about the victim's credibility. The prosecutor's statement that there is "no evidence of any assault taking place" is

clearly incorrect, as the forensic medical exam cited anal trauma, anal bleeding and anal lacerations, all of which would be consistent with the victim's allegation that she was sodomized. Finally, the prosecutor failed to note that the "witness" who could corroborate the defendant's version of event is the defendant's father.

A second LAPD case involved a victim and suspect who had known each other for three years. According to the victim, they ran into one another at a bus stop and the suspect asked her if she wanted to be his girlfriend; she said that she did. She stated that the suspect then took her to a hotel, where he told her that they were going to have sex and that he wanted her to have his baby. The victim stated that she told the suspect that she was a virgin and that she did not want to have sex until she was married. She said that the suspect then told her to sit on the bed, pulled down both of their pants, orally copulated her, and vaginally penetrated her. The victim suffered from schizophrenia and made inconsistent statements during the course of the investigation. The victim also said that she initially agreed to have sexual relations with the suspect but that she changed her mind when they arrived at the hotel.

The investigating officer interviewed the suspect, who stated that the incident was a "loving act" and that no force was used. He said that the victim asked him if he had a condom and that when he said he did not, the victim still "allowed" him to have sex with her. When the officer asked him why he had sex with the victim even though he knew that she was mentally ill and could not rationally make the decision to have sex with him, he replied that he "forgot that she was mentally ill."

This was one of only a few cases in which the victim made pretext phone calls to the suspect. In the first call, the suspect told the victim that he would not make her have sexual relations with him if he saw her again unless she wanted to; he added that he would not force her



to have sex with him. In the second call, the suspect stated that she “looked so pretty that he went crazy and just had to be with her,” and in the third call the suspect swore a number of times that he would not force her to have sex. In this call the suspect also admitted that he forced the victim to have sex with him.

Despite the incriminating evidence from the pretext phone calls, including the suspect’s admission that he forced the victim to have sex, the suspect was not arrested. Instead, the case was presented to the district attorney, who rejected it for lack of sufficient evidence, adding that it “cannot be proved that the incident was not consensual.”

A case that was investigated by the LASD involved a victim who reported that she met the suspect while drinking at a restaurant with a friend. She said that she engaged in conversation with the suspect throughout the night and that she woke up in the suspect’s bed, but did not know how she got there or what happened. After the suspect took her home, she began to experience pain and went to a clinic, where she told the nurse that she was “very forcibly raped” and in need of medical attention. She was taken to the UCLA Medical Center, where she said that she did not want to get the suspect in trouble, but she did want to know what happened.

The doctor who performed the forensic medical exam told the investigating officer that the victim sustained injuries that would require surgery; he further stated that the vaginal injuries were most likely caused by a foreign object or a fist, not by a penis. The exam also revealed extensive bruising to the victim’s arms, neck, and shoulders. Although the victim stated that she did not take any drugs whatsoever, the urinalysis revealed the presence of opiates and benzodiazepines. During the search of the suspect’s residence, the LASD recovered a pair of boxer shorts that had a large blood stain on them; the suspect stated that he was not aware that the victim sustained any injuries. The suspect stated that the sexual relations with the victim were

consensual, denied using a foreign object to penetrate the victim, and said that he and the victim did not engage in rough sex. He also confirmed that no one else had sexual contact with the victim on the night of the incident. During a pretext phone call, the suspect apologized to the victim, stating that he felt horrible about what happened; he also denied that he drugged the victim.

Despite the seriousness of the victim's injuries and the evidence against the suspect, the suspect was not arrested. The case was presented to the district attorney, who rejected it, citing insufficient evidence.

A second LASD case involved a victim who alleged that she was sexually assaulted numerous times by her boss, the owner of the restaurant where she worked. She stated that he called her into his office and demanded that she expose her breasts to him. When she refused, he yelled at her and reminded her that she was a single parent and "needed a job." A month later, the suspect told the victim that her job would be in jeopardy if she did not "please him." He exposed his erect penis and the victim stated that she orally copulated him because she was afraid that she would lose her job. In the next incident, the suspect pulled down the victim's pants and vaginally raped her; she stated that she told the suspect to stop, but that she was too afraid to physically resist him. She stated that the suspect continued to sexually assault her over the next few weeks. She reported the incidents to the LASD after she quit her job.

The suspect told the LASD that all of the sexual contact with the victim was consensual and that he did not threaten the victim. The investigating officer did not interview other employees at the restaurant and did not ask the victim to conduct a pretext phone call. The case was presented to the district attorney, who rejected it, citing the fact that the victim did not make

a prompt report, there was no physical evidence, and the suspect said that the sexual contact was consensual.

As these four cases illustrate, the pre-arrest charge evaluation process is sometimes used to dispose of problematic cases involving victims whose behavior at the time of the incident or whose mental health issues call their credibility into question. In the two LAPD cases and in the first LASD case, there was physical evidence that a crime occurred and/or an admission of guilt from the suspect, but the suspect nonetheless was not arrested. The second LASD case illustrates that the process is also used to screen out cases before the investigation has been completed.

## **THE CORRELATES OF CASE OUTCOMES: A SUMMARY**

Our quantitative analysis of the case outcomes revealed that the likelihood that the case would be unfounded, the likelihood that the suspect would be arrested, and the odds that charges would be rejected by the district attorney were affected by a mix of case characteristics and victim characteristics. None of these outcomes, on the other hand, was affected by the Bureau (in the case of unfounding) or agency (in the case of arrest and charge rejection) that investigated the crime; the victim's race/ethnicity; whether the suspect physically, as well as sexually, assaulted the victim; or the type of resistance offered by the victim.

**The Decision to Unfound.** Our analysis of the LAPD's decision to unfound the report revealed that the likelihood of unfounding is affected by victim characteristics and by factors (collateral injury to the victim and physical evidence) that can corroborate the victim's allegations of sexual assault. The most powerful predictor of unfounding is whether the victim recanted her allegations. This is not surprising, given comments made by detectives who were

interviewed for this project (see Sections VII and VIII). Although many stressed that recanting was neither a necessary nor a sufficient condition for unfounding the report, others stated that they would unfound only if the victim recanted her testimony and admitted that the incident was fabricated. Even after taking whether the victim recanted into account, however, we still found that the victim's relationship with the suspect, the victim's character/reputation, and whether the victim had some type of mental health issue affected the odds that the report would be unfounded. Moreover, the relationship between the victim and the suspect influenced both the likelihood that the victim would recant (there was a greater likelihood if the victim stated that she was assaulted by a stranger) and the likelihood that the case would be unfounded (there was a greater likelihood if the victim said she was assaulted by a stranger rather than an intimate partner).

Our findings suggest a few things about victims who make false allegations of sexual assault: (1) many, but not all, eventually recant; (2) their allegations are eventually unfounded; (3) they believe that their allegations will be more credible if they conform to societal stereotypes of real rape—that is, rape by a stranger. They also suggest that in attempting to determine whether a report is false and therefore should be unfounded, detectives also consider the character or reputation of the victim (is she a prostitute? does she work as an exotic dancer or stripper? does she have a history of alcohol abuse or illegal drug use?), as well as whether the victim has mental health issues that might have led her to fabricate the incident and whether there is evidence (either physical injury to the victim or some type of physical evidence collected from the victim or the scene of the alleged incident) that can corroborate her allegation of sexual assault.

**The Decision to Arrest.** The results of our analysis of the decision to arrest also highlight the role of the relationship between the suspect and the victim. We found that law enforcement is more likely to make an arrest if the sexual assault was committed by someone known to the victim, but this largely reflects the fact that cases involving nonstrangers are more likely to have an identified suspect. In fact, when we examined the percentage of cases with identified suspects that resulted in an arrest, we found that the arrest rate was identical (44.2%) for cases involving strangers and cases involving nonstrangers and was only slightly higher (50.6%) for cases involving intimate partners. The key factor, in other words, is not the relationship between the victim and the suspect but the ability of the victim and/or the police to identify the suspect.

Our results also provide some evidence in support of arguments that arrest is more likely if the rape is an aggravated rape in which the suspect used a weapon or the victim suffered collateral injury. However, we find no evidence that arrest is affected by legally irrelevant characteristics of the victim—the victim’s race/ethnicity did not influence the likelihood of arrest and arrest was not affected by whether the victim was engaged in risky behavior at the time of the incident, had a motive to lie about the incident, had a mental illness or mental health issues, or if there were questions raised about her character or reputation. In fact, and not surprisingly, the strongest predictors of the likelihood of arrest were variables related to the strength of evidence in the case—whether the victim reported promptly (a prompt report means a greater likelihood of collecting physical evidence from the victim or the crime scene), whether the victim was willing to cooperate with the investigating detective, the number of witnesses, and the availability of some type of physical evidence to corroborate the victim’s testimony and connect the suspect to the crime.

Our analysis of the data partitioned by relationship type revealed that none of the victim characteristics affected the likelihood of arrest for any of the three victim/suspect relationship categories: Arrest did not depend on the victim's race/ethnicity or age or on factors that might cause the investigating officer to "blame" the victim or question her credibility. Rather, the odds of arrest reflected the strength of evidence against the suspect (cases involving strangers and nonstrangers), the willingness of the victim to cooperate with law enforcement officials (cases involving nonstrangers and intimate partners), and the seriousness of the crime (cases involving intimate partners).

**The Charging Decision.** We found a different pattern of results when we analyzed the trichotomous charging variable. The relationship between the victim and the suspect, which affected both the likelihood of that the case would be unfounded and the likelihood that the suspect would be arrested, did not have a statistically significant effect on the likelihood that charges would be filed, with before or after the suspect was arrested. We also found that different variables affected the two types of charging decisions. For example, three victim characteristics (i.e., the victim's age, whether the victim engaged in risky behavior at the time of the incident, and whether the victim resisted the suspect both verbally and physically) had a significant effect on the likelihood of charging during the pre-arrest charge evaluation process, but only one victim factor (whether the victim had a motive to lie about the incident) affected charging during the post-arrest charge evaluation process. Whether the victim was willing to cooperate with law enforcement during the investigation of the crime affected both types of charging decisions, as did the suspect's use of a weapon. On the other hand, the promptness of the victim's report, the number of witnesses, and whether physical evidence was recovered had a significant effect on charging decisions only during the pre-arrest charge evaluation process.

These findings suggest that law enforcement officials present “problematic” cases to the district attorney prior to making an arrest and, when the district attorney determines that the evidence in the case does not meet the standard of proof beyond a reasonable doubt or that the victim’s cooperation is unlikely, they clear the case by exceptional means. In other words, cases in which the victim engaged in risky behavior at the time of the incident are likely to be screened out *before* law enforcement makes an arrest, as are cases in which the victim did not resist the suspect or failed to make a prompt report, cases in which there is a lack of physical evidence to corroborate the victim’s story, and cases without any witnesses who can attest to the victim’s allegations. This is confirmed by the fact that none of these factors affected the likelihood of charging once the suspect had been arrested.

The problematic nature of cases rejected by the district attorney (either before or after the suspect is arrested) also is illustrated by the type of defense put forth by the suspect in the case. Although not all suspects were interviewed, those who were interviewed typically claimed either that the sexual contact with the victim was consensual or that the incident was fabricated. However, the cases rejected by the prosecutor were substantially more likely than those in which charges were filed to involve a suspect who put forth a consent defense: 56.7 percent of the cases rejected during the pre-arrest charge evaluation process and 53.4 percent of the cases rejected following arrest of the suspect involved a consent defense, compared to only 36.8 percent of the cases in which the prosecutor filed charges. In contrast, 33.3 percent of the suspects in the cases in which charges were filed made incriminating statements and/or admitted committing the crime, compared to only 4.5 percent of the suspects in cases rejected prior to arrest and 10.2 percent of the suspects in cases rejected following arrest. Cases in which charges were rejected by the district attorney, in other words, were more likely than those in which charges were filed

to be “he said/she said” cases in which the victim claimed that she was sexually assaulted and the suspect claimed that the sexual contact was consensual.



## **SECTION VII**

### **INTERVIEWS WITH LAPD SEXUAL ASSAULT DETECTIVES**

The qualitative component of data collection for the present study involved a total of 123 interviews: we interviewed 52 LAPD detectives, 24 LASD detectives, 30 VIP<sup>48</sup> prosecutors with the Los Angeles County District Attorney's Office, and 17 sexual assault survivors. Due to research standards pertaining to confidentiality and anonymity, sociodemographic information about interviewees such as age, gender, and race, as well as Bureau/Field Operations Region or Division/Station of assignment was not recorded to increase the probability of forthright self-disclosure.

In the following sections we present the results of our qualitative analysis of the interview data. This first section focuses on detectives from LAPD, the second on detectives from the LASD, and the third on deputy district attorneys. The final section summarizes our interviews with sexual assault survivors. Our discussion of the detective interviews begins with a description of the interviewees in terms of time "on the job" at LAPD, length of time investigating sex crimes, extent of specialized training they received, and their assessments of whether specialized training should be required to work sex crimes. It is followed by an analysis of the issues particular to working with sexual assault victims such as rapport building and ascertaining credibility, along with detectives' decision-making processes regarding whether to make an arrest, clear a case exceptionally (known colloquially by the LAPD as to "clear other"), unfound, or keep a case open. The final section examines detectives' perceptions of how to increase the number of successful prosecutions of sexual assault in the criminal justice system, and concludes with policy implications.

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<sup>48</sup> Victim Impact Program

## PROFILE OF LAPD PARTICIPANTS

The LAPD detectives (ranging in rank from Detective I to Detective III<sup>49</sup>) interviewed during this study reflect a wide range of time on the job more generally as well as time investigating sex crimes. Length of time on the LAPD ranged from 10 to 33 years, and length of time investigating sex crimes ranged from 2 months to 25 years. Slightly more than half of the interviewees reported that they did not specifically request<sup>50</sup> to work sex crimes (n = 22; 52.4 percent); they were either randomly assigned or somehow fell into it, but the remaining 38.5 percent (n = 20) actively sought the assignment. The most commonly cited reason for requesting the assignment centered on the *in-depth nature of investigations* yet there were two general qualifiers to this assertion: (1) sex crimes are an important pre-requisite to promotion<sup>51</sup>; and (2) sex crimes are the most rewarding detective assignment due to the process of seeking justice for live victims. Examples of the former include statements such as:

The investigative skills needed for them are detailed and I want to hone in on them and learn more about DNA and preserving the crime scene.

The assignment is a move up. It does what I need to move up [within the LAPD].

My goal is to work homicide and sex is a good pre-requisite due to the intricate nature of the investigations.

Examples of the latter include:

To me sex crimes is advanced detective work. The cases are much more complex, even more so than homicide.

There is great satisfaction when I can speak to the victim and know what they are going through and get to the ultimate goal of finding the perp and arresting them.

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<sup>49</sup> In a few instances Police Officer IIs and Police Officer IIIs who work sex cases volunteered to be interviewed.

<sup>50</sup> N = 42 for this question

<sup>51</sup> The most commonly stated goal was to be a homicide detective.

It is something that I have always been interested in. I prefer crimes against people as opposed to property crimes. I have always worked in domestic violence and sexual assault. And once you have experience in sex crimes you are highly sought after.

Additionally, some detectives reported that although they did not initially request the assignment, they were surprised at how much they enjoyed it and wound up staying:

I thought I'd hate it but I wound up loving it. I love that they are crimes of significance and impact people's lives and if you're going to go through the energy of solving a crime it's good to know it's making a difference.

When I was a detective trainee I tried to learn all aspects of detective work. I went on loan to sex crimes and fell in love with it.

The D-III asked me [to work sexual assault cases]. Now I'm working it, it's hard to go back to other tables.

## **SPECIALIZED TRAINING**

Although all of the detectives interviewed for this study stated that specialized training<sup>52</sup> should be required, only 60.8 percent (n = 31) reported having received training specific to investigating sex crimes, whereas 39.2 percent (n = 20) reported that they had not received such training. To begin, we describe the reasons why detectives stated that specialized training should exist, which centered on the uniqueness and sensitive nature of sexual assault:

Currently the department has lost a great deal of expertise in sexual assault investigations and basic detective work and current training is insufficient to meet the needs for what the job is. Much is missing and that is why our [work] product is less than it should be. We have a turnover problem, and we are numbers driven, and command staff is demanding accountability on stranger rapes only. [For example] the crime reporting sheet that sexual assault detectives have to fill out—it's used to help report to the next level for COMPSTAT purposes. It lists stranger/acquaintance rapes and asks how many involve a weapon, how many victims are under seventeen, and it only focuses on [penile/vaginal] rape.

Sex work is so totally different than any other type of detective work, more so than homicide. Homicide in this area is typically one gang member shooting another gang member; to me there is not much to it. [Working] sex crimes is totally different. You have the complexity of delayed reporting, the psychology of delayed reporting. Often

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<sup>52</sup> N = 51 for this question

they feel—especially teen and adult victims—that they put themselves in compromising situations and so they are embarrassed and delay the report thinking ‘I was stupid and I deserved it.’ So you have to deal with that psychology, and let them know that everyone makes mistakes but that doesn’t give the person the right to harm you. It doesn’t mean that you’re not a victim because you made a dumb decision. Often victims do not react the way you would think a victim would react... The homicide hierarchy is irritating. It’s one little punk that hits another. Occasionally you have the errant shot that hits an innocent person but our victims are innocent. [For example], I have a thirty year old mentally retarded woman; the victimology here is weaker people. The men who do this prey on the weaker people in society. I’ve had a woman commit a sex crime against a thirteen year old girl but she used more psychology than physical force.

There should be [specialized training] because you’re dealing with very sensitive evidence that often times has DNA and coming into it with no training—it’s a whole new world, much like jumping into homicide; you can’t just walk in and do it. It takes a lot of time and expertise to do it and do it right. I learned the hard way not having that training, which would have been nice. The ones I initially struggled with were children victims and how to interview them. I went in with the same mindset as talking to an adult but had to redo it because I assumed they knew right from wrong. With adult victims you need a lot more patience than with other crimes but other than that there is no difference [between child and adult victims]. Being a victim of a rape is a lot different than being a burglary victim. It’s life changing, something that never goes away; they may be in counseling for the rest of their lives. You must be patient with them and that is crucial to getting the job done.

[Specialized training should focus on] forensic interviewing techniques, how to talk to a victim, understanding teenagers, and evidence recovery. I had a unique case where the suspect ejaculated on a certain area of the couch and carpet and the detective went and attempted to obtain swabs and got a positive read.

There is so much that goes on with sex crimes: DNA and preservation of evidence and dealing with victims that it takes specific investigative skill to do a thorough investigation and have the level of sensitivity needed.

Absolutely. These are highly sensitive crimes and without any training you are not equipped to deal with them. It’s not like a routine property crime.

I think it would help speed up the learning curve a little, [for example] interpreting a SART exam, what the medical findings really mean, qualifying children, etc.

We definitely need specialized training because there are so many things depending on the type of sexual assault. The majority of our sex crimes are family members and people known to the victim. We do not have a lot of stranger rapes here, but you still need a lot of training to look for different types of evidence, which is why the ongoing training is so important.

Yes [specialized training is needed]. The mandate for working sex assault is the MAC<sup>53</sup> school. I just sent one of my supervisors who has been doing this for years to MAC school. The department's attention to this detail is very low.

Yes, because everything they teach you in detective school in terms of investigations, interrogations, etc., does not apply to sex crimes. [They require] different interrogations and styles with victims. [Detective school] does not cover it [sex crimes] enough.

Yes, because there are a lot of situations that may arise which don't come up in other cases such as juveniles and why they do or don't report and why they may omit certain facts. Same thing with adult women in relationships—they may be assaulted by the husband or a family member and feel unsure about reporting it. Detectives must learn how to deal with these issues and coax the victim through to ensure the info she provides will remain anonymous.

Yes, because that way you're not winging it and learning off other detectives. A lot of times supervisors do not know what they're doing. Seasoned detectives are retiring and it's the new officers and they're young and the expertise isn't there.

Yes, because it is such a specialty. You're investigating these very complex and specific cases and you need to know and be versed in the penal code—especially with juvenile victims—in terms of what crimes are applicable to what you're investigating. Also, the way in which cases are filed in our County; we have vertical prosecution where a special DA who is versed in the field files the case and takes it all the way to trial. [That is] unlike any other crime; not even murder is handled that way. Plus [there's] the forensic part of it—understanding SART exams and deciphering them, and collecting DNA and blood evidence.

Absolutely! Not just training. There are people who can sit and be trained but they've made their mind up. There has to be passion. If you don't have it you will not go anywhere. People get a report and already decide an outcome and it floors me that people are still like that in this department. They can't be open-minded. How do you protect against that?

The most common training that detectives reported familiarity with specific to sexual assault was LAPD's Major Assault Crimes (MAC) School,<sup>54</sup> although there was inconsistency in the extent to which detectives reported that issues specific to sexual assault are covered therein. Those with more time on the job noted that during the 1990s there was a department-run, three-

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<sup>53</sup> Major Assault Crimes.

<sup>54</sup> To a lesser extent detectives referred to medical reporting classes offered by Northridge Hospital/CATS and Robert Presley's Institute of Criminal Investigations. Detectives also cited in-services and classes offered by LAPD's Scientific Investigations Division (SID).

day sexual assault school, which ultimately merged with the MAC school with the intention of covering both domestic violence and sexual assault. Others noted that, while helpful, MAC school focuses more exclusively on family violence with less focus on the uniqueness of sexual assault in terms of the varying victim/suspect relationships and the importance of interview and interrogation skills in cases where there is often delayed reporting and a lack of DNA evidence.

Finally, of the detectives who reported that they did not receive any specialized training, most emphasized that the LAPD primarily involves “on the job training,” which, a detective stated, “hasn’t changed over time.” Another detective noted that “I think it [specialized training] would be difficult because we don’t have the luxury of picking a place so people could be trained and then never end up working there. You learn on the job and you go to the training when there are detectives who like working these sorts of cases.”

In summary, although the sample of detectives interviewed during the present study reflect a wide range of time on the job at the LAPD and experience in sex crimes, they were unanimous in agreement that specialized training is needed for all sexual assault detectives due to the sensitive nature of the crime, the skills required to interview victims and interrogate suspects, and the intricacies of investigating and gathering evidence in these cases. Although detectives differed in the extent to which they felt that MAC school provides sufficient sexual assault training, many emphasized that the skills taught in basic detective school are *counter* to those required to be a good sexual assault detective in terms of interviewing and interrogation, which suggests that specialized training should be mandated prior to working sexual assault cases.<sup>55</sup>

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<sup>55</sup> This statement is predicated on the assumption that all LAPD detectives have completed detective school.

## WORKING WITH SEXUAL ASSAULT<sup>56</sup> VICTIMS<sup>57</sup>

Every victim is going to act differently [in response] to a sexual assault. This is a difficult part of this job that not everyone can do.

Some victims you want to take home and hug them. All victims react differently: some scream and yell, some cry; some wither away in the corner.

**Establishing Rapport.** Consistent with the aforementioned discussion of the need for specialized training to work sexual assault cases, the majority of respondents reported that the *onus is on the detective* to interview victims in a way that is sensitive to the trauma of sexual assault because, as one detective encapsulated it, “Most [victims] are cooperative based on how they are treated.” This requires setting a tone of sincerity and respect upon first contact with victims to facilitate cooperation and maximize the likelihood of full disclosure about the incident. For instance, a detective stated that “Initial contact is huge. A lot I have learned through trial and error...As far as interviewing skills, that is something that is critical. If you don’t have sincerity the victim is going to feel it.” Detectives emphasized the importance of meeting victims halfway to build rapport by putting them at ease, explaining every detail of the investigative process, and “getting to know them as a person and not just a victim.” Examples of this include the following:

I try to make them feel as comfortable as possible; explain the process as candidly as possible, walk them through it, provide them with resources and let them know what’s available. I also try to convey that regardless of what the circumstances are we still are in

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<sup>56</sup> For the purposes of descriptive statistics presented herein from quantitative analyses of case files, sexual assault is defined as: (attempted and completed) rape (penile/vaginal penetration), sodomy, oral copulation, rape with a foreign object, and rape by intoxication.

<sup>57</sup> It is important to note that many LAPD and LASD detectives (and prosecutors) interviewed for this study initially responded to questions with child victims in mind and the researchers had to redirect them to the focus of the present study, teen and adult female rape victims. In discussing teen and adult female rape victims a clear trend emerged: some emphasized an inherent skepticism about teen and adult female victims in particular and focused on stranger rape as the only “real” rape; others emphasized the relative rarity of stranger rape, asserting instead that nonstranger rape is the overwhelming majority of cases they see and that specialized training is required to interview teen and adult victims, interrogate suspects, and overcome the consent defense.

their corner but they need to be honest with me. For the most part they are not uncooperative.

[The] first thing is putting them at ease and showing them I'm on their side. Getting them to relax and then I tell them the admonition, if you will: sometimes people are compelled to omit things when telling a story to make themselves feel more credible/believable; well, don't do that. Tell us the truth. We've heard it all. You're not alone with this, it has happened before, just tell us the entire story.

In interviewing the victim, you have to explain what your job is. Don't jump to conclusions and say, well you were out drinking. I explain everything, I never raise my voice, never accuse them. Explain the entire process. They have been through a lot to begin with, the trauma of sexual assault; if they are not willing to talk to us then, we tell them that we will do it later.

[We build rapport by] explaining everything along the way. Introduce ourselves. Our goal is to prosecute; this is what we need to get there, you and I are on the same team. [I build rapport by] keeping in touch, being honest and up front, and letting them know you're on the same team working towards the same goal.

The main thing that I do with my victims is just listen. They have just been through a traumatic experience and I imagine what if this was my family member, my daughter. Initially I just listen and keep an open mind and if there are inconsistencies in their statements I will make note of those because ultimately my job is to seek the truth but I think that having an approach that is more empathetic allows them to feel more comfortable with me and trust in the system perhaps that everything will be done to bring justice to the case. And if the DA still decides to reject the case the victim is confident that I did everything I could. I always want to project that to the victim that: (1) I take the case seriously; (2) I have an open mind; (3) every stone is turned; nothing is left undone.

[I establish rapport with victims] by acting friendly and caring. We try to feel for their emotion. Convey to them that their feelings are the normal cycle: fear, remorse, anger. [I] offer them comfort and convey that we will work with them on the case.

[I establish rapport by] introducing myself; explaining my role. I find out if they need anything before we start [and] explain that this is a safe zone, [that] I can address any concerns they have because most of the time I can resolve them.

In short, detectives who stated a preference for working sex crimes emphasized that the majority of victims are cooperative and their cooperation is largely influenced by the ability of the detective to set a tone that builds rapport and engages the victim as a partner in the investigation. This is consistent with the findings from our quantitative analysis, which revealed



that 56.3 percent of females age twelve and older who reported a sexual assault to the LAPD in 2008 cooperated with the investigation. Further, a detective stated that “A lot of times they [victims] are frustrated because they had to tell the story to the hospital and to the responding officer and now they are here again and having to tell the story again.” Recognition of these factors, knowing one’s limitations, and responding sensitively, many asserted, is the key to overcoming them. However, discussion of how to build rapport with victims also raised some of the sex crimes-related challenges that detectives face which are exacerbated if their preference is not to work these types of cases. For example, a detective who emphasized that sexual assault victims seldom cooperate with the police commented that “Oh yeah, it happens a lot where they hang up in your face or curse in the phone, or you call back and they start avoiding you. [I say to them] we have a crime report and I have to do something with it. Let me know what you want me to do. I can’t assume anything; I need you to tell me.” Another detective, reflecting upon the dynamics of the tone set by detectives upon initial contact with victims, stated:

A lot of cops who work the streets come off really coddish, rough, authoritative, and sound really official and do not come across as a human being and that gets magnified if they’ve [victims] ever had a bad experience with the police. And then [if] the detective comes off really cold, they can get withdrawn. Often it’s your demeanor and being able to key in on victims who are leery about prosecuting, who are scared and being able to convince them of the importance of moving forward. Often victims do not want to prosecute because they have moved on but we tell them if this person is out of jail we can put him in jail and get him to stop doing this to others. I hate to do that and make them feel guilty but they will often take that into consideration. It is important to let them know you care about their case and not that it is just any other case.

Often the detectives who exhibited frustration associated with what many termed “victim management” also described both a discomfort with and a reluctance to incorporate rape crisis advocates into the rapport building process. For example, a male detective described the relief he feels when female victims express a preference for speaking with a female: “[With] female victims I tell them they have the right to speak with a female officer and I hope that works.”

Another detective expressed frustration related to how rape-related trauma impacts a victim's ability to provide information for the police investigation: "I have one now where it's so traumatizing for her I can't even show her a six-pack.<sup>58</sup> It's been a month and she wants an advocate there and I can't even get there with her. She needs kitty gloves." Along similar lines another detective stated "I don't try to be overly dramatic with compassion. Empathize and let them know you are there to try and find the person by trying to do everything possible to get this information. If a victim wants an advocate during the interview that is fine, but the trust factor is important and I like to put her at ease and speak alone."

Many detectives noted, with regards to the rapport building process, that victims pick up on and respond to detectives' verbal and nonverbal behavior. The irony is that rape crisis advocates are trained to address the precise issues that some detectives reported being the most draining and "social worky" aspect of working these kinds of cases, including but not limited to: fostering victim cooperation, crisis intervention, and providing referrals for counseling, follow up medical care, and civil legal services. It is important to note, however, that many of the detectives interviewed for this study recognized the critical role that advocates can play to address victims' psychosocial needs, which, they asserted, ultimately allows them to focus on their primary role as investigator and evidence gatherer.

***Uncooperative victims.*** When asked about uncooperative and hostile victims, interviewees' responses differed in the extent to which they empathized with and inherently believed victims. This is an important issue to analyze because depending on an officer's attitude and efforts s/he may prematurely close a case as victim uncooperative. The following are examples of detectives' statements that implied what may be termed an "innocent until proven guilty" approach to victims:

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<sup>58</sup> Police jargon for a photo lineup so that victims and witnesses can identify a suspect.

[Victims can be] uncooperative, yes, but not hostile. Most people want to solve the problem, but when someone is uncooperative it is for a reason. They have some type of agenda [that explains] why they're uncooperative. Or it could be they just don't want to deal with it anymore. It could be just not wanting to deal with it. [It] doesn't mean they're lying.

Similarly, another detective commented:

Usually my first contact is over the phone. [They] have already met with patrol officers, SART nurses, advocates. As of yet I have not had any problem with people talking to me. I explain that I work sex crimes exclusively. I try to explain the process as victims have unrealistic expectations about how long things take. I try to be very low key because they tend to be anxious. I reinforce the services that are available to them. I try to explain the process; the more they know the better. I know the advocates at the [local rape treatment center] reasonably well and they will call me if they have a victim who is particularly anxious or hostile. I had a victim who was a chronic alcoholic and was being victimized multiple times. I tried to get her help for her alcoholism, which was leading to her victimization.

Detectives offered insight as to why a victim might be initially reluctant or uncooperative, and emphasized that "You don't just sit them down and hit them with questions":

[I] try to bring myself down to their level. Tell them that I have been doing this for a long time and I do it because I care. [I] give them my cell phone and tell them that what I need now is just a brief summary of the incident [and I] will pick you up tomorrow and we will talk in more detail. [I respond by] giving that person respect and not judging her. If you are humble enough, it is okay. They may yell, but I am cool with that. They really hate everyone at that point, but why wouldn't they? Someone just violated them.

You have to sit down and let them know that you really are there to help them. For example, I had a young lady who was a prostitute, HIV positive, [and a] drug user. She was hostile and would get angry when she had to repeat things. But you can get around that if you are patient.

Try to make people feel like they are not bothering me, not taking up my time; try to allow them to feel that their case is important. The reality is that I have a lot of cases but to that victim this is the most important thing in her life. I try to allow them to see me as a person, someone they can talk to.

I wish we were uniform citywide. We do have hostile victims, maybe because they reported before and weren't believed, or they were treated badly by patrol. They could have not been believed or ridiculed. If [they're] in counseling [it will] let them work through that. It has worked with [local rape treatment center] where we have got victims

to come forward six months later. [But] rarely we do have personality conflicts and I will need to switch. Every once in a while I can switch it up.

Advocates are used a lot here... Most [come into the picture] from the SART exam or they get referred to people from [local rape treatment center]. Lately I have had a good experience with them, but previously I found they interrupted the investigation [by] doing a lot of that stopping to make sure she [the victim] is ok. I [previously] found that they were a hindrance.

I try to get down to the underlying issues: why is this victim saying or acting this way now, especially if recanting. Once you get into those underlying issues you can address those issues and help them to overcome them. It is easy with our caseload to just give up, but I like to ask why.

These comments suggest that detectives are aware of the impact of their behavior on victims and the effect it has in terms of the likelihood of cooperation with the police. One detective encapsulated it as follows:

Child abuse and sex crimes are not the types of cases that just anyone can work. It has to be someone who has an interest in these types of cases. I have been an officer for fifteen years and I think that the worst kinds of cases are those that involve child molestation, elder abuse, and sexual assault. But I don't want to work property crimes. I want to work crimes where I can really help people. That is what makes my day and makes me want to come to work every day. If you don't feel that way, you should not be working these kinds of cases.

In conclusion, two caveats are noteworthy: (1) there are undoubtedly situations in which some victims are uncooperative that are truly beyond police control (e.g. victims with severe mental health issues; victims who disappear); (2) the much larger grey area regarding both victim cooperation with the police and police perception of victim credibility involves adult nonstranger sexual assault cases in which the victim is either acquainted, intimately involved with, or related to, the suspect. A detective explained:

As long as you are yourself and explain the importance of prosecuting those are the major factors [in dealing with hesitant victims]. Most situations where the victim is hostile it is [in relation to] the manner in which the assault occurred: they knew the suspect, he was a friend of a friend, and they are afraid it will bring problems in the family. [Reiterating the

point] Hostile victims are not often; when so, [the assault usually involves] nonstrangers. You have to work around that and explain how you can fix that.

This statement highlights the importance of training police officers about the dynamics involved when a sexual assault victim is acquainted with the suspect, and the associated implications for reporting (often delayed) and cooperation with the investigation due to social interdependence, shame, fear, and self-doubt (Daly & Bouhours, 2010; Kinney, Bruns, Bradley, Dantzer, & Weist, 2007). Taking this a step further, the following sections examine how detectives evaluate victim credibility, and their perceptions of the difficulties faced by victims when reporting a sexual assault to the police.

**Ascertaining Victim Credibility.** A commonality amongst all interviewees' evaluations of victim credibility was a focus on the mechanics of reporting<sup>59</sup> and consistency<sup>60</sup> in retelling how the incident occurred. However, the major difference between the responses was the extent of detectives' recognition that the process through which information is obtained from victims often creates the inconsistencies that seemingly discredit them. We begin by providing examples of the first set of responses, which are best categorized as "sex crimes are complicated." Two themes are integral to this idea: first, victims must be taken at face value and not pre-judged; second, the police (including patrol and detectives) have an important role to play in maximizing the likelihood of obtaining consistent information from victims:

I feel like I found my cup of tea; the investigation I want to do. I give one hundred percent because of the satisfaction I get in being able to help these victims. I know they can be traumatic and it takes something away from women and girls and if I can put a little back by putting someone in jail and bring closure to that victim then it gives me

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<sup>59</sup> Our quantitative analysis revealed that 25.8 percent of females age 12 and older reported a sexual assault within one hour of its occurrence to the LAPD in 2008.

<sup>60</sup> Our quantitative analysis revealed that 20 percent of females age 12 and older who reported a sexual assault to the LAPD in 2008 gave inconsistent statements.

satisfaction and makes me want to go out and keep doing it. People always ask me don't you get tired of that investigation? I say no, bring it on.<sup>61</sup>

I can only think of one in eleven years that lied to me and I think she was put up to it to get her father out of a court case. I have picked up cases that were unfounded and have later got felony charges filed. We always judge everything and are taking in what they're saying. Often when they are lying it is for a legitimate reason. [You have to] listen for inconsistencies. Sometimes it is an issue of questioning. It is the same dynamics with adults and kids. You have to be sure they understand, you have asked the right question, and [that you] understand their answer if it seems inconsistent.

[I establish victim credibility by the] evidence I have. I don't initially look at someone and say she's lying. I'm working on a case right now where the victim lives elsewhere, comes to LA once a month; she has regular clients here. She was legitimately assaulted by an individual who picked her up and wanted her to work for him. He's a pimp. He's been arrested; has numerous counts against him. I hate to say it but officers did not believe her. I said to bring both into the station and he's looking at a lot of time. What is unique about this case is the guy has a prior record; he lied about his identity and prior conviction. He copped out to the fact that he smacked her around a little bit but he then said he did it. The victim is cooperative in this case.

[Victim credibility is] tied to the investigator's opinion. [You have to] talk to other sources in the investigation, i.e. witnesses, the suspect. You can't determine anything based on the victim's history, i.e. arrests for prostitution. That does not mean she cannot be raped. Credibility is tied to independent resources, and finding info that refutes what the victim is telling you.

Ultimately you don't know whether the victim is telling the truth or not. Even with training and experience, we all have biases and sometimes those biases affect our evaluation of the victim. Only god knows for sure unless there is a video of the incident. I'm not sure how you really do know. Even if forensic evidence is missing it does not mean it did not happen.

I never start a case by thinking 'what is the jury going to think about the victim and her behavior?' If the victim is well prepared—by me and by the DA—we can take it forward. But the victim has to know that her behavior is going to come out and the fact that she is a stripper or a prostitute does not mean that something did not happen. Also, we try to tell the victim that it is important to dress appropriate for court; she needs to dress as though she is going for a job interview.

Victims will tell us [detectives] that what the [patrol] officers wrote is not what really happened. Some officers are coming off duty and want to get out of there [go home after they get off work] so they rush the reports. Younger male officers not as experienced in sex or sexual assault. They are almost scared of it because they do not know. The officers have to take them to [local rape treatment center]. Then it is easier for them to watch the

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<sup>61</sup> A Deputy Chief described sentiment such as this as “having a fire in the belly” to work these kinds of cases.

interview there and take notes there. I think it has kind of streamlined in the past ten years. Still at times the younger officers are fearsome so they do not dig as deep as they should.

Most problems I have encountered credibility-wise are when the crime scene evidence does not match or is inconsistent with her rendition. Once again, it could be perception based. One thing to do is we walk a victim through a crime scene. It is better when she walks through the house and it is cognitive and she is using more of her senses and you will get better information than if she is only doing something like answering a question in a sterile environment like this [interview room] or the hospital. But you also have to be able to deal with trauma. Always start with believing there was an event, but it will take a while to get there. I never believe intoxicated or mentally ill victims or those who have been involved in something in that first hour of an interview. That first contact is not where you are going to get all that [you need for] your interview. For example, I heard somebody talking to a victim on the phone on a cold hit case. The victim contacted the detective after getting a postcard in the mail. It was a few years back. The detective told the victim the suspect was identified and [said] ‘I need to know if you would be willing to go to court.’ They wanted a decision this moment when it was eight years ago. I cannot even tell you what I am going to make for dinner tonight let alone testify in court! We need to do better for them. Court is a big decision. Give them a week. Say can I come speak with you. Give it a level of respect.

The preceding statements illustrate the complexities of sex crimes in relation to gathering consistent information from victims and the subsequent impact on detectives’ perceptions of victim credibility. They emphasize that trauma-sensitive interviewing skills, withholding judgment, and thorough investigations are key ways to ascertain victim credibility.

The second trend of responses about victim credibility are best categorized as victims are “guilty until proven innocent” given the emphasis on stranger rape as “real” rape (DuMont, Miller, & Myhr, 2003; Estrich, 1987), the need to conduct criminal record checks on victims,<sup>62</sup> suspicion about delayed reporting, and a focus on consistency between the patrol officer’s report and their first attempt at gathering information from the victim as primary methods to evaluate victim credibility. Something notable about these responses was the frequency with which

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<sup>62</sup> Our quantitative analysis revealed that 12.4 percent of females age 12 and older who reported a sexual assault to the LAPD in 2008 had a criminal record of some sort.

detectives stated that their strategies for evaluating victim credibility were based on assumptions about how “righteous” victims should behave. For example, a detective stated that s/he establishes victim credibility “From how it was reported; if the story made sense. You need more, to probe for further explanation. It’s not like you walk in there and believe someone.”

Others stated:

[A community based agency’s] entire focus is the victim, which is at odds with the police department’s, which is the objective application of justice. Because someone comes in, male or female, and ninety-nine percent is female, and says they were sexually assaulted does not mean we have to believe them. [The agency] complains we are suspect sympathizers.

Everyone’s different. I try not to stereotype. We have a good share of 5150s, people who are bipolar, schizophrenic, on drugs, etc. If they tell me up front they’re on medication then I put them in a category of how to deal with them. If a teenager, I talk to their parents first. Is she attending [school], how are her grades; if they give a good report then it is usually an issue of a new boyfriend. If grades are bad and they’re cutting school and smoking weed then I’ll put them in another category. Then you have a righteous case, stranger rape, then we get excited about them because then we have a real case to investigate.

You can push some victims hard enough that they will recant because they don’t want to deal with a difficult investigating officer. I don’t do this but I know that there are I/Os who do. They will challenge the victim, confront the victim until she decides that she does not want to have anything more to do with the police.

A lot of factors come into play; for example, age. Young victims for the most part have not developed a personality where they can create a story and lie. I try to get as much detail as I can. If she says they went to a hotel, go there, see if I can get evidence, see if her story makes sense. Sometimes you check their background and see if they have made other reports before and it is important because it will come out in court. For instance, if they had an opportunity to get away from the suspect and didn’t. How come they didn’t notify the police sooner? Why didn’t they get medical treatment when it was explained to them and they still refuse to go?

Obviously it has a lot to do with the victim’s past. We run the victim. Has she made false reports in the past or made reports that she did not follow through on; has she been arrested for prostitution,<sup>63</sup> narcotics offenses or other crimes.

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<sup>63</sup> Our quantitative analysis revealed that 7.8 percent of females age 12 and older who reported a sexual assault to the LAPD in 2008 were sex workers.



You get a feeling for how open people are when talking to you. If truly a victim they are not guarded of the incident. They may be afraid or emotional, but they won't try to hide or watch what they say or things of that matter. If there is a feel of them not telling the truth then we express the seriousness of the allegation and make them see that once you make this allegation and it moves forward it affects them for the rest of their lives. That kind of helps, unless they have a motive. If I really think they're not being honest I'll run them in the system to see how many complaints they've made before.

A lot of my victims have been children, kids, and young teenagers. I have always been taught to run my victims to see what their past life has been like. I check to see if they have made similar reports but recanted previously. It is hard to determine whether someone is telling the truth. I have one where a young girl came in [who] seemed unstable. [The] initial report stated it sounded like she had consensual sex and when I interviewed her she seemed unstable, mentally off, etc. But I still felt emotionally that something happened. As I investigated the suspect more I found that he had done something earlier, which gave more credibility to her. It was gratifying as most [detectives] would just stop there. I don't leave those. I finished a MySpace warrant on that suspect; my interviews with her tell me something happened plus statements made by the brother. If it turns out she didn't tell the truth I know I investigated it on my part.

If their story changes; if they come in and are laughing and joking and not taking it seriously. It is their demeanor. You try to figure out if laughing is their way of attacking it. By interviewing people; giving them a cell phone to call and see who they call when we leave the room. Most sex victims, if they are actual victims, they take it very seriously. They sit in here and shake and cry. You can see it by body reactions.

***The Role of Alcohol and Drugs.*** Findings from our quantitative analysis indicate that 36.7 percent of female victims age twelve and older who reported a sexual assault to the LAPD in 2008 were either drinking (29.3 percent) or using drugs (7.4 percent) during the alleged assault. When we asked detectives to comment on the role of alcohol and drugs as they relate to victim credibility the majority observed that substance use—particularly in cases with suspects and victims who are nonstrangers—is more heavily scrutinized in relation to female victims, whereas for male suspects it either has no effect or it is offered as evidence to undermine an assertion that they would have been able to formulate the intent to commit a crime. Bearing in mind that substance use was not present in more than half (63.3 percent) of the sexual assault reports involving female victims age twelve and older in 2008, the first of two trends in

detectives' perceptions of the issues raised when substance use is present is best categorized as "it can be overcome." This perspective emphasizes the importance of building a nonjudgmental rapport with victims, and a thorough investigation on the part of the detective:

Alcohol is legal, we all dabble in it, and there's nothing wrong with that. Yes, inhibitions get kind of numbed when drugs or alcohol are involved but again I try not to get too opinionated about the use of those things in these cases. Just like if I were to have a victim in a wheelchair and is some sort of paraplegic and is taken advantage of. It's kind of the same thing; they're the perfect victim in a way. A woman or man who has had too much to drink or uses drugs and is taken advantage of in a way it kind of proves that it could have happened. It really makes the story more believable. A lot of times alcohol and a fun time runs hand in hand with having sex. And it makes the story in many ways more believable, more than you just knocked on your friend's door and just barged in there. It makes it more of a believable scenario unless it's a straight case in which a suspect breaks in a home and burglarizes a victim, then that's a different story. The normal rape case is usually like a date rape type scenario, those are the most popular. Stranger rapes are the most uncommon.

When drugs and alcohol are involved it still constitutes rape, but it is harder to prove [and] the DA will see it as questionable. We evaluate credibility as the case develops. It is easy to look at a case and say she's lying or she's being truthful. I had a case where the victim was a young girl, sixteen years old, in summer school. [She] took a sip of a drink and passed out. Several hours later she said she found herself in a residence with other young people and she said she was sexually assaulted. She was found on the curb, distraught. The medical exam showed that she had been assaulted, but we knew that one sip would not lead her to pass out for several hours. We had a second interview after we had gathered some evidence from her peers. In that interview she admitted that she had lied. She ditched school, went to a party, and drank so much that she was intoxicated and she was sexually assaulted. Even though she lied, we made an arrest, four males and a female. The case went to court and all of them were convicted. It was a great case even though she lied to us.

Alcohol plays an important role in whether the DA will file the case or not. It can be tough to know if the victim is telling the truth. [I] have to follow up by talking to witnesses, examining the evidence, and then corroborate that evidence based on what the victim is telling me. I have had all sorts of victims, including those with mental disabilities or those who are prostitutes. It does not mean that they weren't raped. Just because she has engaged in prostitution in the past does not mean that she isn't credible. Some things are clarified during a second or third interview with the victim. I need to clarify any inconsistencies in the victim's testimony. If her story changes on re-telling, we need to figure out whether these inconsistencies are the result of confusion or because a family member was standing there and she did not want them to know.

It had a big impact fifteen years ago, but it has less of an impact today. [But] you can't help the victim who is passed out and wakes up and senses her vaginal area may be moist. That's interesting; does it articulate a rape or sexual encounter. I can't tell you that if you can't tell me that. If a victim was in a vulnerable situation fifteen years ago it was less likely to be considered a real attack. Now it is evaluated under a different set of standards and you will have victims in vulnerable situations and are a righteous victim. Those changes have come about with society's standards. There was a day that you were told you were asking for it, but that's not the case today.

It depends on the circumstances. As long as the victim has received medical treatment, then obviously we have that evidence to go on. It depends; it really does depend. Back when I worked [another Division] I had a young girl who ditched school and she went to a ditch party. It was around the holidays, she was the only girl there, [she was] beautiful. She ends up drinking ungodly amounts of vodka, passes out, defecates on herself, and thirteen guys had sex with her. They're in prison as we speak. All were juveniles, five of which I was able to bump into adult court. It [alcohol] can work both in your advantage, and to your disadvantage. The reason police got informed was she was an honors student, had never ditched before, and her family was worried about her. The victim had said to her sister I'm going to a ditch party. Today she is a victims' advocate and went to college, and is doing fantastic. What's funny about that case, I love that case; of all the kids I picked out the gang member because that's one thing they will not tolerate. He said yes I will tell you I was there and will tell you who did what. He looked me in the face and said I'd rob someone off the street but [I would] not [do] that. That could be my sister.

They vary because a few cases, not a lot, the victim will say she drank something, felt lightheaded, and then say she woke up a few hours later and has no recollection of what happened. As far as suspects, most of them will claim that they did have a few beers or alcoholic drinks and that is what made them do it. That is when you rely on friends, witnesses at party, etc. It has no connection to charging decisions.

Within this category of responses were reflections from detectives about the evidentiary challenges in these types of cases, as evidenced in the following examples:

I've had a lot of cases involving alcohol or victims who have been drugged. The hard part of these cases is that victims appear to be super drunk. They can walk around and hang on a guy and they appear to be together; the guy is bringing them drinks. [Then he] carries the girl out and rapes her in the car. [I had] another case involving the same guy. He does the same thing at another club with two women: walks them out to their car, rapes one of them in the back seat. One of the girls threw up and we were able to test it to see what type of drug it was.

[We are] now gathering info on cases where victims leave the Hollywood clubs and they wake up and they have no recollection whatsoever of what happened. [It's] scary for them and a challenge for us to determine what happened. We have to rely on DNA to

identify someone. But it does not mean that you won't get the case filed. You may have witnesses.

Drugs and alcohol are present in the vast majority of cases and it doesn't necessarily mean it will be a help or a hindrance; it depends on the totality of the circumstances. If the victim is so inebriated she cannot currently give an account of what happened it complicates things, it is an obstacle to overcome. [But] it cuts both ways. The fact a suspect is inebriated is not a legal defense. It's a non-issue in that respect. You're still culpable for your actions, [and it is] one more element that must be explored investigatively to see whether the person was capable of having forethought.

The second trend in detectives' responses emphasizes that alcohol- and drug-related sexual assaults undermine victim credibility because of the victim's poor judgment:

It can go both ways. Sometimes alcohol and narcotics are a means to get what he wants. Sometimes it is a way to lower her inhibitions and can cloud the memory of the victim. It can affect the filing decision. We get a lot of cases where the victim comes home drunk and tells mom and dad that he got her drunk. But the truth is that they were both out there partying and no sex crime occurred.

I think in adults alcohol and drug use play a large part. It more deals with the victim and her ability to make correct decisions and situations where she feels that she was sexually assaulted.

With illegal drugs it is always unfavorable which plays into victim credibility when it comes to the jury. You're already in the process of committing an illegal act and then you're crying foul when an illegal act is committed against you.

It complicates the case because now you have two intoxicated people with inhibited decision making ability. It is very important to find out what actually happened, if she drank alcohol and made bad decisions and then woke up in the morning and regrets it and now it is rape. Drugs are out of the system in four to six hours and if there is not a prompt report we have to find out why. It is very difficult when alcohol is involved.

If the crime is alleging rape by incapacitation then of course it is a huge factor. If she was just drunk and made a mistake she regretted the next day then that affects the filing. Sometimes the suspect was just as drunk as she was and could not formulate the intent to commit a crime. A lot of these cases involve victims who have made a wrong decision. It doesn't mean they deserve to be a victim of a crime but it affects whether we can prosecute.

When they have become victims fifty percent of the time it has something to do with a drug; eighty percent of the time suspects have been using narcotics and they are trying to get the victim to. Often the victim says the suspect gave me a pill, Kool-Aid, pot; or, I was out partying and drinking vodka with Red Bull. To break it down, it has been my experience in half of the time they were under the influence voluntarily.

It plays a huge role. Unfortunately I strongly believe that the use of alcohol and drugs by a victim/female puts her in jeopardy of being sexually assaulted. A lot of time our victims will drink too much to where they can't control their surroundings and make right decisions and defend themselves and a lot of times I feel if they hadn't used the drugs or alcohol that wouldn't have led them to become victims because a lot of the cases I have seen they become so drunk that they know they are being assaulted but they really can't react. If the suspect has been using alcohol or drugs that definitely comes into play because it's presented to the DA. I think sometimes they are held accountable for using and others they are excused, i.e. if he wasn't using he wouldn't have done it.

Taken together, these quotes emphasize that drugs and alcohol blur the line of consent in nonstranger cases, and that women often wake up the next day feeling regret, thus reporting what was really consensual sex as rape. There are two issues that are most problematic about the preceding quotes, the above one in particular. First, while describing what is in legal terms the felony of rape by intoxication (to which the police are obligated to react) "...they become so drunk that they know they are being assaulted but really can't react," the detective's primary focus is on victims who "can't control their surroundings and make right decisions and defend themselves," which serves to obfuscate the role of suspects and render them unaccountable in these types of cases.

Second, interviewees stated that depending on a detective's discretion and the extent to which s/he investigates, cases of the nature described above get disposed of by what are termed "Undetermined Sexual Assault" *non-crime* reports. It is important to recognize that both patrol officers, who all interviewees stated have even less specialized training in the complexities of sexual assault, and detectives (given the ubiquity of delayed reporting in nonstranger sexual assault) have the discretion to take this type of report, but detectives decide whether the case should be re-categorized as a crime report. Failure to investigate these cases validates the suspects' behavior and increases the likelihood that they will do it again without fear of

punishment, while simultaneously increasing victims' self-blame and lack of confidence in law enforcement. Moreover, it doubles the challenge for the detectives who take their job very seriously and work hard to build rapport with and assure victims that regardless of what transpired prior to an assault, they did not deserve to be victims.

***False Reports.*** The final issue that ties in with victim credibility is false reporting. Detectives were asked to comment on victims' motivations for filing false police reports based on their experience working sexual assault cases. Although they provided varying responses depending on the victim's age—whether an adult or teenager—the overarching reasons for making false allegations centered on the following: covering up for one's whereabouts, revenge, money, attention-seeking, mental health issues, and prostitution<sup>64</sup> related “business disputes.” Some detectives, however, again emphasized the complexities of sex crimes and cautioned against a quick rush to judgment:

We don't see many false reports, but there are some involving very young girls who for some reason believe that it is better to make up a story about rape than to get in trouble for being out too late or going where they aren't supposed to be.

Fabricated/false crimes are not as prevalent as people seem to think. They do exist but understanding how to handle them is the nuance that is so important as a detective; deliberate deceit versus mistake of fact. For example, a girl drinks all night, wakes up in her bed, does not know how she got there, has no underwear on, and feels raw as if she had sex. Just because her DNA swab comes back saying no DNA detected does not mean a rape did not occur. Fabricated cases exist and are hard to investigate but you have to do basic detective work.

I just put a guy away for thirty-five years that a top sex detective who teaches for LAPD would have unfounded if s/he could. It was IC [redacted to prevent identifying the detective]. There were eight pages of opinion in the report. Only reason the guy didn't get life was they feared putting the detective on the stand. The detective thought she was making it up.

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<sup>64</sup> To clarify, by raising the issue of “business disputes” detectives were not categorically asserting that simply by virtue of being a prostitute one cannot be raped. Rather, they drew a distinction between cases in which suspects prey on prostitutes because they are vulnerable and cases in which a prostitute and a John agree to sex for a price, it occurs, and then he refuses to pay her. With no civil recourse given its illegality, prostitutes will sometimes reach out to the police for help in the context of a rape report.

In terms of adult victims, the most frequent reasons given for filing false reports are to either cover up infidelity or to act out in revenge as a woman scorned. One detective described false reporting as inherently about “Marital discord, boyfriend/girlfriend, or husband/wife not getting along. The husband wants to have control of the wife and she goes out and meets someone. Whenever you have relationships you will have problems.” Other detectives commented along similar lines:

The number one issue is custody issues; going through a divorce and the husband and wife are fighting for custody of the kids. All of a sudden the wife will report that the husband touched the child in her private parts or the wife will claim that her husband raped her so that she will get custody of the kids. Now there is also the U-visa issue. And then there is just plain old revenge. Usually they are upset and trying to lash out and get revenge. Some people just want attention and are missing something at home. Some know the system and know that they can get benefits if they report a crime [such as] help in relocating and medical care. To the normal person, you don’t want to go through the SART exam, but some people do; it is a sacrifice they are willing to make to get out of the chaos.

I had a woman who claimed that she was assaulted by a UPS worker because she thought that she was not getting enough attention from her husband. We had the canine unit out and devoted enormous amounts of resources to the case. In that case the city attorney did file on her.

It can be something as minor as an argument, a DV situation in which partners are having problems and if the suspect hits his wife a lot of times we see it that to get back at him she will make a false police report and get him put in jail for the weekend. We’ve had DV cases in which we have caught women on tape telling the suspect why they filed the police report. If we honestly feel the victim is lying we will test the victim’s credibility by making a pretext phone call. So he may hit her and then she may take it a step further and state she was raped.

Finally, as noted earlier, detectives described the prototypical false report of sexual assault as involving either an adult or teenage female. They stated that the most frequently occurring reason for teenage girls to file false sexual assault reports revolved around not wanting

to get in trouble at home related to a missed curfew, ditching school, or staying out all night; runaways; or covering up consensual sex, as evidenced in the following responses:

I had one, a young girl who wanted to report that she had been raped. She started giving me the circumstances and I told her it sounded like it came from a movie. We traced the steps and she started to laugh and she said ‘Ok I lied to you but here is the reason why.’ Not all of it was made up, but she was never even touched by that guy. She did it because she got in an argument with her father and didn’t want to be home and wanted to get back at him. A report hadn’t been taken. She was fifteen/sixteen and had a boyfriend and wanted to do whatever she wanted. She alleged a stranger did it.

Sheer attention. I have had victims who just like the attention that they are getting. If I figure out that that is what is going on, I will put the fear of god into that room to have them tell me the truth. I have a high caseload and it makes me furious if someone takes my time away from legitimate victims. I will call them on that. We don’t arrest them but I do threaten them with ‘the bill.’ If I find out that you are lying, from this moment forward your parents will get a bill from the city for the time that I have spent on the case, for the composite arrest, for all of the other resources that were wasted on this case. That is when the truth will come out.

I’m always interested in reporting mechanism, how it came to light. For example did the assault just occur and the victim called 911, or is someone three months pregnant and starting to show and need alibi as to why they’re pregnant so they tell their mother or boyfriend they were raped. The timing, mechanism, why and how it comes to law enforcement’s attention is very telling. We had a child abuse case I’m suspect of. The girl is thirteen and developmentally delayed. Her mother became suspicious and grilled her daughter and the girl denied but she kept pressing the girl until the girl made a disclosure. The police were called, a report was taken, and before we could follow up the mother continued to grill the girl and now more disclosures have come out. Did it happen? I don’t know. I haven’t investigated yet, but I’m suspect. It could be an overzealous parent who was maybe abused as a child and is highly sensitive and telegraphing their concerns onto their children. It’s apparent she’s not taking no for answer and they’re not going to let the kid leave without saying something happened. Is it possible she was not molested and was doing it willingly and not by force? It makes me suspect.

In summary, detectives reported that victim credibility is ascertained by the evidence, their self-presentation, and consistency in describing the incident. Many detectives emphasized the passion and unique skill set required to investigate this form of victimization and thus were oriented towards an “innocent until proven guilty” assessment of victims, whereas others emphasized the ubiquity of alcohol, drugs, prostitution, and infidelity, which oriented them more



towards a “guilty until proven innocent” assessment of victims. This is important because findings from analyses of case files revealed that in 2008 the majority of female victims age twelve and older were not using alcohol or drugs during the alleged incident (63.3 percent), were not sexworkers (92.2 percent), provided consistent statements to the police (80 percent), and only 10.9 percent of cases were unfounded. Considered together, this underscores that the seminal task for detectives as “advocates for the truth” (a term utilized by many to describe their job) is to disentangle the context of nonstranger suspect/victim relationships because they are the most frequently occurring suspect/victim relationship that they encounter, and to formulate conclusions via comprehensive investigative skills as opposed to preconceived notions or first impressions of whether an incident involved consensual versus nonconsensual sex.

#### **Perceptions of Challenges Faced by Victims When Reporting.**

Patrol officers, instead of treating them like a victim, center more on disproving her testimony. The victim is traumatized and/or she is intoxicated at the time of interview. Their [patrol officers] interviewing techniques are not the same as ours. We do not try to disprove her. We just want her story. The patrol officer writes the report and notes all the inconsistencies.

We see a lot of self-victimization. Girls who go to Hollywood clubs and drink alone. [You] don’t need to drug her, as she will drink until she is drunk. Guys will be there at closing time looking for the drunkest girl in the bar. They will buy her one drink and she will end up leaving with him. As one suspect said to me, ‘everyone knows that drunks are easy.’

The final question specific to victim/police rapport focused on detectives’ perceptions of the difficulties faced by victims when reporting a sexual assault. Respondents overwhelmingly stated that the police are the biggest challenge in terms of patrol officers and detectives who routinely question victims’ “righteousness,” along with the overall invasiveness of this type of criminal investigation, which was described by some as “a homicide except you live with it

forever.” Respondents also commented on the personal challenges for victims, especially for those who are acquainted with the suspect and must contend with the social, emotional, financial, and logistic sequelae of social intertwinement. Likewise, many detectives stated that the biggest challenges stem from the court process itself and overcoming the biases of jurors, judges, and society as a whole. A detective shared the following story:

There has only been one case in all of the years that I have been investigating sex crimes where the DA filed charges in a she said/he said situation. It involved a schizophrenic victim who was off her meds and was raped by someone she met at a bus stop. She was a transient and went with this guy; they drank and hung out for five hours and he ended up forcing her to orally cop[ulate] him. She did not want to go to court but I arrested him anyway and I about fell off my chair when [the deputy district attorney] agreed to file charges. She may regret it later, but she did file.

Another detective, noting empathy for “real” crime victims, emphasized the need to minimize the number of interviews:

Victims reporting real crimes, the most difficult thing must be a feeling of embarrassment; telling a stranger, officers, I can see how very difficult it is. It’s a horrible crime and you’re relaying these details to a complete stranger. And the medical exam must be horrific as well. We try to interview with the DA’s office for children victims. [With] some adult cases we try to do the same thing, especially if the suspect is already arrested given time constraints.

Similarly, another detective commented:

I have thought about this a lot. The righteous victims don’t know where to turn. If they were just to notify anybody, they do not know what to do. If they are actual victims, they are traumatized and they don’t know where to turn. They know to call 911 but after that they do not know what to expect. It is also their upbringing. They have to be taught to trust in law enforcement for help.

As noted earlier, 25.8 percent of female victims age 12 and older in 2008 reported to the LAPD within one hour of the assault; in other words, three quarters of sexual assault victims did not call 911 to immediately report the crime. This suggests that basing an assessment of victim’s credibility on whether they dialed 911 is problematic and adds to the challenges faced by victims

when reporting. It is important to note, however, that many detectives recognized this dynamic, and stated that delayed reporting is more of the *norm* than anomalous in sexual assault cases. Consequently, they noted, the onus again falls on the detective to draw upon comprehensive interview and interrogation skills to combat the evidentiary challenges that come along with delayed reporting.

Other detectives offered reflections specific to the department bureaucracy, dynamics with DA's office, and the overall investigative process as being the most challenging for victims. For instance, recalling personal experience, a detective stated "I worked seventeen years of patrol. We do not have any training for report writing. There is not enough training on report writing. The report writing and interviewing skills are not there." Another stated that it boils down to:

The casual indifference of patrol officers who don't have the experience to know what they're dealing with; the Bureaucratic face of the department that is not cognizant between property crime and a rape. Officers know they have to take them [victims] to the [local rape treatment center], but by the numbers approach rather than a 'what can I do to help this victim' approach. It is a major training issue, which is something that cannot be totally changed. Victims have the most problem at that first contact with law enforcement where they feel not understood or judged. A P-II working the front desk who has a victim walk in to tell him she was raped, he should go to an interview room [with the victim for privacy]. Some issues have to do with manpower and in the best of all possible worlds an officer would call someone from the field. The initial first contact is most problematic. Patrol doesn't ask the right questions. It's an education level. They will take a rape report and there is no insertion of a penis into a vagina; they haven't asked what happened. Our weak, lame, and lazy are put on the front desk. You've just been raped and you have to talk to the grumpy guy who can't work the field.

Many detectives echoed this sentiment. For example, one stated the biggest challenge is:

Us. Sometimes you will get good people, otherwise you get people who are sure you are lying. I asked her if she didn't remember the concert how do you know you didn't consent to sex. You go through hell: make the report, undergo the exam, feel disgusting. Often I feel we victimize the victim more than the suspect does.

Also emphasizing the role of bias, a detective supervisor stated:

I am not confident that every officer keeps their personal thoughts to themselves and remains unbiased. We've had a lot of victims say they 'would have gone for medical treatment but I knew he [patrol] didn't want to take me.' Then we see victim refused medical treatment [in the report] and we know that's a red flag. Plus her own obstacles, how she will deal with family, adjust to counseling, and get all of that in their life. Plus, court is a scary world they don't know how to deal with. Everything they see on TV of persecution of victims, but I joke they persecute the detectives because defense attorneys see that juries don't like that [persecuting victims]. But, first responding officers, plus another big obstacle is most detectives have so much work to do that the victim may not be contacted for a while. We try within two to three days but it doesn't always happen.

Often detectives supplemented their answers with a story. Consider the following, which segues into the other notable arenas of challenges for victims when reporting, including but not limited to their personal challenges, social support (or lack thereof), and the court process:

I handled a case involving GHB<sup>65</sup> where the victim was drugged. The victim did a pretext phone call, which was successful and the suspect admitted that he slipped it to her without her consent. I found GHB in his refrigerator. I asked my victim have you ever done this or that before, it doesn't matter, just tell me. She denied she was a party girl, [said she had never] done GHB before. In the course of my investigation I came across a witness that was supposed to be used for corroborative purposes who said she was no stranger to GHB and did that all of the time. The DA didn't like the fact the victim had lied to me and to her and rejected the case. And this came from her own personal experience. The DA had just finished a high profile GHB case and put herself on the line for the victim and it was like the scenario I described earlier. The defense unearthed evidence proving the victim was lying about something else and perjured herself on the stand. It left a bad taste in DA's mouth and it's one of those things you just say I'm not going down that road. We all bring biases. Unfortunately the timing was such the DA was coming off the heels from a distasteful scenario where the victim proved to be a liar and they said they won't go down that road. I took the case to the City Attorney's office and misdemeanor charges were filed. Lessons learned. Credibility is huge. The victim's credibility is huge.

This scenario alludes to an issue raised by many detectives; that is, the fear, shame, and self-blame experienced by victims in contemplation and during the process of reporting to the police. For instance, a detective noted that victims have a "fear of not being believed; an embarrassment. They're worried they will be blamed for putting themselves in a bad situation because of their judgment." Another stated:

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<sup>65</sup> Gamma-Hydroxybutyric acid.

They have a lot [of challenges]: (1) coming forward, which is difficult to do. I'm positive there are so many others out there that don't have the courage to go through the process; (2) the court system; (3) family dynamics. We have to notify family members, the family breakups that happen, all of which the victim has to live with; (4) not being believed; (5) when they are raped by a husband, boyfriend, cousin, etc., those are major obstacles they have to live with.

Another emphasized that the primary challenges are "Fear, retaliation, the court process, alienation from family, and fear of the unknown." These challenges are so great, they noted, that it sometimes prevents victims from wanting to criminally prosecute so they can focus instead on internal healing:

They're ashamed. A lot [of victims] feel like they could have prevented it from happening. Facing the fact of what happened [is also difficult]. If they're going through rehab and doing the 12 steps it is just closure for them. They're not interested in prosecuting the guy; it's just getting it over with.

Cultural issues are relevant as well. For instance, a detective noted, "Depending on the victim they are apprehensive, especially in the Hispanic community. They do not want to talk, want to keep it to themselves, and move on." Reflecting on the extent to which suspects benefit from these difficulties for victims, a detective emphasized that "Getting over the embarrassment [is difficult]; even the kids are ashamed. They somehow feel responsible. How [are we] to convey to victims that whatever you did you didn't deserve to be a victim? There are a lot of guys who get away with it." Meanwhile, a detective observed, the victims experience "Fear of retaliation, of being rejected by family and friends, and of the process."

In terms of the court process, a detective stated the biggest challenges relate to "[The loss of] confidentiality and embarrassment; having to tell family. Also [their] safety, and the repercussions of talking in court." More specifically, a detective asserted:

It is very difficult to talk about sex crimes in particular. Some people do not like saying the body parts. I had a case that went to jury trial recently, and the reason the girl did not

disclose the oral copulation was because she was embarrassed. She did not want her family to know that. It is difficult to report and then see it through. [They have to]tell the story too many times.

This section has examined detectives' rapport building strategies with victims, as well as their perceptions of the challenges faced by victims when reporting a sexual assault. Findings revealed two opposing trends in detectives' perceptions of and approach towards sexual assault victims, which are best categorized as either "innocent until proven guilty" or "guilty until proven innocent." The following section transitions to the realm of detectives' decision-making during the investigation process.

## **THE INVESTIGATION**

Investigation-related questions focused on the types of sexual assaults that detectives perceived to be the least and most prosecuted, and what it takes to close a case, either by "solving" (through arrest or the exceptional clearance, known colloquially as to clear "other") or unfounding it. As the interview data indicate, sexual assaults involving nonstrangers (known as "he said/she said" or "one on one" cases) seldom result in charges being filed by the district attorney's office because they often entail delayed reporting and a lack of corroborating evidence. Removal of the corroboration requirement was a major focus of rape law reform efforts in the 1970s and 1980s (Clay-Warner & Burt, 2005; Spohn and Horney, 1992), and its persistence offers evidence that in some<sup>66</sup> jurisdictions these efforts have not translated into practical change. Second, a sizable portion of LAPD detectives (upon direction from

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<sup>66</sup> For instance, this practice has also been identified in the Cook County State's Attorney's office in Illinois and it was raised in the September 2010 Senate hearing about the Chronic Failure to Investigate Sexual Assault Cases.

peers/supervisors) will postpone the decision to arrest<sup>67</sup> in nonstranger sexual assault, preferring instead to consult with the DA's office by phone, FAX, or by doing what they termed a "case drop off," which, in effect, gives the prosecutor control over the arrest decision by basing it on a prosecutorial standard of proof beyond a reasonable doubt rather than probable cause.

Additionally, delayed reporting is a critical issue that underlies this discussion because many interviewees stated that if the suspect was on site when the police respond it is more likely that an arrest will be made. Thus, given the ubiquity of delayed reporting in nonstranger sexual assault, discretion to arrest increases and disproportionately falls on the detectives assigned to investigate these cases, as opposed to patrol officers who respond to a 911 call with a crime in progress. Considered together, these dynamics create an environment in which there is enormous discretion in the decision to investigate and prosecute nonstranger sexual assault. The danger is that depending on a detective's biases, the mandates from her/his supervisor, and the overall professionalism of the work environment, the trivialization of—or an increased burden to prosecute—nonstranger sexual assault serves to further the stereotype that stranger rape is the only "real" rape (DuMont et al., 2003; Estrich, 1987), because only in that context is the consent defense an uphill battle for the suspect and the victim is less likely to be accused of somehow provoking it.

## **CASES LEAST & MOST LIKELY TO BE PROSECUTED**

We find with prosecutors from the DA's office and their experience in trial that they have a low likelihood of conviction [in acquaintance and date rape cases] using the techniques that have worked in the past [in stranger cases]. The only way we can get a filing is the pretext phone call. And it has to be a complete confession, not just an admission. You almost need a victim to use legal language for it to be relevant. Fortunately that is the

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<sup>67</sup> Findings from our quantitative analysis reveal that in 2008 the LAPD arrested 26.7 percent of sexual assault suspects alleged to have victimized females age twelve and older (their LASD counterparts arrested 42.9 percent of suspects).

majority of our cases. I say fortunately. No one likes to grade rapes, but we do. Stranger and child rapes being the worst and we don't see a lot of those. Not that someone is not going to be traumatized if raped by a friend or a date or an acquaintance; that is where we have seen change. We have done a reversal where a majority of our cases used to involve strangers.

We begin with a focus on the cases that detectives stated are least likely to be prosecuted. Although it varied by Division, many detectives raised the issue of unlawful sexual intercourse cases because—in practical reality—a police response creates conflict between victims and their parents over disagreement that the relationship is consensual. Consequently, they noted, the district attorney's office declines to prosecute except in cases where the age difference is such that the more likely charge is lewd acts with a child. A second observation was that victims' and suspects' families are often supportive of the relationship. Thus the time and paperwork associated with unlawful sexual intercourse reports left some interviewees wishing that juvenile detectives would take over these cases.

The second type of case that detectives stated was least likely to be prosecuted is the “infamous he said/she said”<sup>68</sup> scenario in which there are no witnesses, the suspect and victim

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<sup>68</sup> To clarify, acquaintance and intimate partner sexual assault are both encompassed under the “he said/she said” category but assaults involving current or former intimates require unique consideration given the correlation to other forms of violence, an increased risk of domestic homicide, and they are the least likely type of sexual assault to be reported (Bergen, 1996; Mahoney, 1999). It is also important to note that interviewees referenced spousal rape as cases that are *both* least and most likely to be prosecuted. For instance, one detective stated, “Spousal rapes are rarely filed unless there is a confession. It's the whole thing of they are not going to put the victim through it if they don't believe in the end they'll convince twelve people this happened. Always the same explanation is given to the victim.” Another noted, “Domestic ones are difficult because they aren't reported in a timely manner and they get reported collaterally with something else. Almost as an aside they say he raped me too. You would think they would come in and say that initially she didn't report but stayed with him, perhaps to make 273. 5 stronger.” Other detectives emphasized that sexual assaults involving intimate partners are not inherently insurmountable, but the challenge is getting them reported on the front end: “Spousal rape is absolutely the hardest but we seldom ever get those. Those are difficult even if you have injury because he argues she likes it rough. [It] takes the difficulty from acquaintance rape one step further. However, we are successful with spousals in getting a domestic filing and not a sex crime. There are techniques for investigating acquaintance or spousal rapes to get statements from him without him knowing, but the issues we face are first getting the report.” Another noted, “Spousal rapes are easier to file when the husband is no longer living with the wife; if he forces her when coming over for the kids, for example. She doesn't have the problem of trying to leave; she already has. I've seen these successfully prosecuted.”



are nonstrangers, and the victim alleges rape but the suspect says it was consensual.<sup>69</sup> Consistent with the preceding questions, responses evidenced either an “innocent until proven guilty” approach, which recognized the complexities specific to this group of victims and these types of cases, or a “guilty until proven innocent” approach that emphasized stranger rape as the only “real” rape. Examples of latter include: “99 percent of rejects are spot on. There is that 1 percent where you believe what the victim has said.” Another stated: “I feel bad for the victims. I call it ‘buyer’s remorse’ where girls who have been partying and drinking have sex with a man willingly. Is it a rape? In my opinion, no.”<sup>70</sup> But we take a report. There needs to be some responsibility toward the victim as well. You are responsible for how much you drink and where you spend your time.”

Conversely, a sizable majority of detectives commented along the following lines:

They are very personal crimes. For the most part we have female victims; she has already had to go through it and made a report. She feels revictimized when she has to relive it with the I/O<sup>71</sup> and then with us and then again with the DA. She will then be torn apart in court. Just trying to get a victim to try to want to go through it. A lot of times they just want to be done with it.

Sexual assault is a very specific crime and it can happen to men, women, and children. A lot of victims disappear; they just want to forget about it. This is a challenge, to find them again after they make the report. The most challenging part is trying to stay in contact with these victims after you have done the investigation.

Ones with an at-risk victim like a prostitute, drug user, [or] women with mental illness, which is unfortunate because they’re easy victims. People want to blame them but the thing is they are targeted because of that.

Different populations of nonstrangers: intoxicated victims, victims with mental illness, and prostitutes. They are challenging victims but it does not negate their victimization. Detectives do not distinguish well whether victims’ conflicting statements are due to mental health, age, etc. Victims sometimes sweeten the pot and say he had a gun to try

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<sup>69</sup> Findings from our quantitative analyses of 2008 case files revealed that 51.9 percent of suspects who were interviewed by the police gave a consent defense.

<sup>70</sup> Findings from our quantitative analyses of 2008 case files revealed that an officer directly questioned the victim’s credibility in 11.8 percent of cases.

<sup>71</sup> Investigating officer

and help the case because it may be more believable if they say that. Then she does not stick with the story, and we must recognize that she made that up for a reason but it does not negate that a crime occurred. Also with prostitutes; they are out there and get victimized being in cars and it is difficult to manage those victims [as well, but] they are not investigated with the same level of professionalism and integrity as they would if you [the researcher] were [raped]. When crime is down and technology is up we should be doing a better job than we are doing. [For example], probable cause: this is where we fall down as an organization. In nonstranger cases when the victim gives her rendition and the suspect claims consent or alcohol use the next step for an investigator is not DNA; it is evaluating injury, the condition of clothing, fresh complaint witnesses, and doing those other things to figure out who is telling a lie because someone is. Just because someone says consent there are other avenues an investigator can take to establish who is lying.

Acquaintance rapes are the most difficult because there is rarely any witness, corroboration, or evidence because even if you have evidence of sexual activity, proving consent is the hard part. He says ‘Yeah we had sex and she was ok with it,’ and she says ‘No.’ Sometimes there is vaginal trauma with consensual sex and sometimes there is no trauma with forced sex so they are the most difficult.

The issue of vaginal trauma is important because, as noted by this detective, its absence does not prove that sex—forced or consensual—has not occurred. Thus, detectives should not make a final determination about a case based solely on a SART exam. Turning to the following statement, it is notable because it reflects both the “innocent until proven guilty” and the “guilty until proven innocent” approaches. Although the detective expresses a level of sensitivity towards sexual assault victims, it appears to be reserved for “righteous” victims—a qualifier such as this implies that a less than anomalous portion are not—of stranger rape:

The most difficult/least prosecuted cases [involve] my righteous victims because they’re so traumatized to go forward if we find the individual who did it and get them through the court proceeding. I wouldn’t say that it’s about holding the hand of the victim—that’s a lot of the reason why detectives don’t like sex crimes—it’s not. But you have to be compassionate and compatible. If you got stuck in sex crimes and don’t want to be there you’re not going to do it well.

Finally, some detectives reported that depending on the DA with whom they interact different types of cases are more or less likely to be prosecuted:

It depends on the jurisdiction and the DA's office. Certain [deputy] district attorneys are horrible. Unless there is a signed confession and the assault is caught on video camera they will not file. And that is not fair to the victim because 90 percent of the victims we get are not perfect, pristine citizens. Sure, I had one sixty-year-old woman sleeping with her husband when her suspect broke in. [But] God forbid you are young and in college and drinking; you are fair game. Prostitutes as well.

In today's day and age it is very difficult, which you would think would be the opposite. And I will say this: [certain DA's office] has changed considerably. We have specialized DA's who do this and to me it feels like they do everything they can to not file a case. I've found a DA who I like and I take everything to her, but the supervisor won't make her mind up on anything. Some are afraid of trial, some fear losing. Before at [a Division] we'd say even if it was he said/she said but we believe her we would take a chance knowing it was 50/50, but nowadays they aren't willing to take that chance.

We have a DA who as soon as s/he hears alcohol s/he is quick to reject it. On the surface we concur, but sometimes we push. The DA's office does not file those cases.

Often the DA's office relies on evidence and things they can prove beyond a reasonable doubt. I don't like that because they are going by putting themselves in front of a jury saying can we convince a jury. Often we have enough evidence to go to a preliminary hearing but they may not want to take a case; they want more, a slam dunk case. I often wonder why. Rumor is they get rated based on convictions so they hesitate unless it's a sure win. We can go to court with a good denial or if we have shut down the suspect's alibi or other factors so there is enough to file a warrant. I feel there is prejudice at the DA's office because unfortunately we have many victims with prior prostitution arrests and some DAs will not go forward just when seeing a victim has that history. Often the victim will feel embarrassed and not say upfront that they were lying and often that is enough for DAs to say they will not file. The problem is there are career serial rapists who go unnoticed because the DA isn't filing.

Turning to the cases that detectives stated are most likely to be prosecuted, they involve at least one of the following: "tons" of evidence, such as witnesses, a video recording, signs of a struggle, multiple victims, and immediate reporting; and cases involving child victims (approximately six to twelve years old because younger children often do not qualify to testify) or suspects and victims who are strangers. Detectives also emphasized that cases with credible victims will get filed, as well as cases in which the suspect confesses. One detective described a credible victim as:

A victim who does not have a criminal history of prostitution, [although that's] not to say that they are not victims because some prostitutes are righteous victims; DNA evidence, other evidence [such as a] videotape or independent witnesses that make it clear that the crime did occur and that it occurred just as victim said.

Similarly, another detective reported that a case most likely to be prosecuted has “All of the biological evidence, forthcoming victims and witnesses, corroboration, no issues—as one DDA told me—of “moral turpitude” regarding the victim, so those cases are ideal. Moral turpitude has come up a few times with the DA’s office.” A final important issue that detectives raised is the importance of good interrogation skills when dealing with suspects because cases that are most often prosecuted involve a confession. Many emphasized that this is more critical in nonstranger sexual assaults given the pervasiveness of delayed reporting and the frequent lack of available biological evidence. For instance, one detective stated that “Being here [in this Division I’ve seen that] when suspects are Spanish speaking they confess, whereas if you have an English speaking suspect rarely will they cop out to it. You get victims who recant and suspects who will admit.” Another detective commented that “Confessions do not occur very often but it depends on how experienced the investigator is and how well they interview the suspect. Some detectives don’t have the patience but those who are and who like the challenge will take the time to interview the suspect and get that confession.” Finally, other detectives added that the polygraph plays an important role in facilitating suspect confessions:

The majority of the cases that we see are cases that happened many years ago. These are cases involving victims who wanted to forget about it. But because they have waited so long you don’t have critical information that you need to make that case stick in court. Corroboration is a huge part of these cases but most of the time we don’t have any corroboration of the victim’s testimony. We use the lie detector with the suspect. If they fail it, we can confront the suspect and ask him why he failed the test.

The next section examines the Federal Bureau of Investigation's Uniform Crime Reporting criteria to solve cases, which is followed by a discussion of detectives' decision-making with a focus on the decision to arrest and to clear exceptionally, known colloquially as to "clear other."

## **SOLVING CASES: DISCRETION TO ARREST OR "CLEAR OTHER"**

"The integrity of the processes being used to track and report on crime and arrests is critical to compiling the data used in the foundational step of the COMPSTAT process, which is to obtain 'Accurate and Timely Intelligence.' This data is ultimately used by LAPD command and staff officers in creating crime reduction strategies, allocating resources and deploying personnel. The operative word in this process is accuracy and follows the garbage-in garbage-out principle. In order to create the best crime reduction strategies, those strategies must be based on an accurate crime picture." –D-III Jeff Godown<sup>72</sup>

According to the Uniform Crime Reporting Handbook (Federal Bureau of Investigation, 2004), offenses are cleared either by arrest or by exceptional means (known in the LAPD as "cleared other"). The handbook states that "an offense is cleared by arrest, or solved for crime reporting purposes, when at least one person is (1) arrested, (2) charged with the commission of the offense, and (3) turned over to the court for prosecution (whether following arrest, court summons, or police notice)" (p. 79). Regarding exceptional clearances, the handbook notes that there may be occasions where law enforcement has conducted an investigation, exhausted all leads, and identified a suspect but is nonetheless unable to clear an offense by arrest. In this situation, the agency can clear the offense by exceptional means, provided that each of the following questions can be answered in the affirmative (pp. 80-81):

- Has the investigation definitely established the **identity** of the offender?
- Is the **exact location of the offender known** so that the subject could be taken into custody now?

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<sup>72</sup> Taken from "COMPSTAT and Crime Reduction" ([http://lapdonline.org/newsroom/content\\_basic\\_view/34396](http://lapdonline.org/newsroom/content_basic_view/34396)) in response to January 9, 2007 LAVOICE.ORG Article, "Is LAPD Fudging Our Crime Stats?"

- Is there **enough information** to support an arrest, charge, and turning over to the court for prosecution?
- Is there some reason **outside law enforcement control** that **precludes arresting**, charging, and prosecuting the offender?

It is important to note that although the Detective Operations Manual (DOM) accurately cites the UCR Handbook wording (I/152.01 - I/152.25), our analyses revealed that in LAPD policy and practice, (although it varied based on one's experience and supervisor), many detectives erroneously interpret "charged with the commission of the offense" to mean that in order to clear a case by arrest felony charges must be filed by a prosecutor. Thus, if a prosecutor declines to file charges against an arrestee, many detectives unnecessarily change<sup>73</sup> the case clearance from "cleared by arrest" to "cleared other." According to the FBI, "charged" means a *police booking procedure* (arrest) which results in the suspect being turned over to the courts for prosecution, *irrespective* of the prosecutor's decision to file charges against the suspect (see Appendix B). In other words, if the police make an arrest (both misdemeanor and felony) the case is cleared by arrest. This is important to clarify because the criteria to exceptionally clear a case cannot be understood without the baseline understanding that the FBI considers a case cleared by arrest once the police make an arrest and turn the suspect over to the court for prosecution, regardless of prosecutorial decision-making thereafter.

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<sup>73</sup> In forty (14.6 percent) of the 273 rapes and attempted rapes from the 2008 weighted sample of sexual assault cases a suspect was arrested but the case was cleared by exceptional means when the district attorney refused to file charges. Because the UCR Handbook clearly states that the exceptional clearance is to be used only in cases in which law enforcement is *unable to make an arrest* due to factors beyond their control, these cases are incorrectly cleared by exceptional means. Adding these inappropriately cleared cases to the LAPD's arrest rate more than doubles the rate from 12.1 percent to 26.7 percent.

Turning to the exceptional clearance, it should be used only in exceptional cases (as the label suggests), but the key misunderstood concept is *the police must have probable cause (sufficient evidence), but are unable to make an arrest for reasons outside of their discretion and control*. To demonstrate, consider the four questions which must be answered in the affirmative to clear exceptionally. The first two require that the police have an identified suspect and they must know her/his present location. Given the aforementioned clarification from the FBI that “charge” refers to a booking procedure, it is important to recognize that the third question speaks to probable cause (sufficient evidence) to make an arrest, and the fourth question emphasizes that although these three factors are present, the police are unable to arrest the suspect for reasons beyond their control. To illustrate the types of cases that might be cleared by exceptional means, the handbook provides a list of examples, many of which involve the death of the offender or an offender who is unable to be arrested because s/he is being prosecuted in another jurisdiction for a different crime or because extradition has been denied. One of the examples provided is when the “victim refuses to cooperate in the prosecution,” but there is an added proviso, which states that this alone does not justify an exceptional clearance and that the answer must also be yes to the first three questions outlined above (Federal Bureau of Investigation, 2004, p. 81).

The following sections highlight that these criteria are not met when detectives either choose or are mandated by supervisors—instead of arrest—to fax or drop the case file at the DA’s office, and when the DA declines to file based on insufficient evidence (lack of probable cause), they clear the case exceptionally. This is a violation of the third criteria to clear by exceptional means—probable cause to arrest—which, relating to the fourth criteria, if present, it is *within* detectives’ control to make an arrest. The majority of detectives stated that between their colleagues and supervisors this is standard operating procedure in “he said/she said”

(nonstranger) cases. In the sections that follow we focus on discretion in the decision to arrest, the pre-arrest charge evaluation process, and “DA rejects.”

## **DISCRETION IN THE DECISION TO ARREST**

I have noticed that in a lot of the sex cases, for a lot of the suspects it is not their first time. Reports prove to be important later on.

We have talked about this issue in the office. Our supervisors are pushing for more detective-initiated arrests based simply on the crime report, but we need to weigh the totality of the circumstances. Especially if it is a one on one situation and there are credibility issues I would be reluctant to make an arrest. I would probably seek a filing first and build a stronger case before we simply put handcuffs on someone knowing the DA will reject it and the guy is right back out. When I arrest someone it is at the point where the case is strong enough to go through the criminal justice system and we are pretty confident we will get a conviction.

When asked what is needed to make an arrest, detectives’ answers ranged from “If I’ve got probable cause for an adult and it’s a felony crime there’s no decision there, they’re getting arrested. I can’t think of a time where I haven’t arrested when I have probable cause,” to “When I investigate a case and see the age of the victim, the helplessness of the victim; but that’s me. All of these cases we have to run by supervisor. A lot of supervisors say don’t make the arrest, talk to them first. If it was up to me I would make a lot more arrests. We can make our own decisions, but it is good to run cases by [supervisors] and see what their thoughts are.” Other detectives, while acknowledging the challenges in nonstranger cases, emphasized the importance of a thorough investigation: “I have cases dating back from last year. Cases are so time-consuming. We do not stop until every stone has been unturned.” Another stated:

Basically it is how much evidence do you have. Is there enough to suggest the crime occurred. Often you run into problems with the he said/she said cases; these are very weak. I try myself to get as much as I can though, independent witnesses, etc. When I



legally detain someone and I bring him here to hear his statements, and if they drag me in the direction that it occurred [I will make an arrest].

Other detectives emphasized that they always arrest if there is a threat to public safety but nonstranger cases did not inherently fall into this category. For instance:

I will arrest [a suspect] if a female said she was raped and she is adamant about it and you have some physical evidence that's seen but not tested like torn clothing or a scratch or two, and she's hysterical, she's adamant about what happened to her. On the other hand, say she's intoxicated and is saying I know it happened but I'm not sure it happened but the suspect [with whom she is acquainted] says 'yeah we had sex.' If she said it happens, and we have enough probable cause, we have to arrest. In some cases we find out after forty-eight hours of intense interviews that she was lying. And I get so pissed at these girls because they've put someone in jail overnight and you find out they were lying. There's been times where I won't arrest, where I will put the case together and submit for a filing even though I have probable cause; [for example], if there's a discrepancy in her statement where she's changed her statement three to four times, I won't arrest. I'll book the property and submit it to the DA's office, especially if the guy is working and established.

As was discussed at length earlier in relation to rapport building with victims and ascertaining credibility, the potential issue with the above statement is what the detective means by a "discrepancy." Professionalism, training, and consultation with colleagues and supervisors should be able to tease out whether it was an artifact of poor interview skills, if the victim did not initially disclose the events in their entirety, or if the victim was indeed making a false report in its totality. In the following response, the detective emphasizes a reluctance to arrest based on the disconnect between her/his perception of rape and the kinds of cases seen in the Division:

You have the ones that report rape and they're with this person and they get together, hang out, go to dinner, and spend the night. But at some point they're not sure, change their minds, or the person doesn't call them back or something where it's like, ok, there's not enough to book this guy and put this on his rap sheet when she just didn't know how to say no or changed her mind. I've had this where she'll say 'I was thinking no' or he didn't have a condom and she told him 'no,' that she would have if he had a condom but she said 'no' and he did anyway. So we don't book them and get that on their rap sheet. There's also the one where they have had sex before. They say they didn't want it, but they don't say no, then they see them again. Or there's when the boyfriend or mom finds

out and then they say it's rape. I just can't see putting a rape charge on somebody for something like that.

The assertion that “we” do not book suspects in cases where the victim says “no” because the suspect does not have a condom yet he has sex with her anyway, suggests that some detectives do not have sufficient understanding of the legal definition of sexual assault, and/or their discretion is inappropriately influenced by rape myths (Page, 2008; Temkin, 2010). Moreover, and rather ironic, many of the detectives (and prosecutors) interviewed for this study asserted that one of the biggest factors in the decision to arrest/file charges in a sexual assault case is the suspect's *prior history* of arrests and convictions, while simultaneously asserting either a reluctance or unwillingness to act in nonstranger cases. The net effect of this, depending on the detective/prosecutor assigned to the case, is suspects in nonstranger sexual assault cases are largely immune from prosecution unless they continue and assault a stranger and/or multiple victims. Consider the following examples:

The rule is if you know the DA is not going to file then you don't arrest. That's a standard. If I know the DA won't file, then we can't arrest.

Criminal record is a big factor. A lot has to do with corroboration. If there is a lack of it I rarely arrest. Also in acquaintance rapes I tend to not arrest and try to obtain a statement from the suspect. I'm looking for anything, if not the total opposite or a more believable statement as opposed to what the victim said; especially if there are holes in the victim's story. I look for corroboration and believability on his [the suspect's] part.

[I will arrest] first of all if the victim is believable, and if there is physical evidence. If he is cooperative, [depends, but] if he gives you the run around then [you] arrest him. A lot of times they want to interview the victim before you make an arrest but if the case is rejected you can't arrest them. So, a lot of times you arrest the guy but then you only have a forty-eight hour time frame. So first you do the investigation and have game plan to arrest the guy. If the DA files charges then good, but if not then it still is on his record. A lot of times that is the avenue we have to take because a lot of times you know the DA will not file so if we don't arrest then he is getting off scot free.

[To arrest I need] evidence: video, biological, etc. We can't just go arrest anyone because they are being accused. We need evidence to substantiate what is being said. Biological

evidence from her, him, DNA matches; those will obviously [amount to] an arrest. I had a case from Jack in the Box where a suspect tried to rape a girl. Without the camera we wouldn't have known who he was. [But] if it's a one-on-one consensual we leave it up to the DA's office because I'm not going to arrest someone if he's saying it was consensual and she says it wasn't. And if I don't have bruising, etc., then I am apprehensive to make an arrest in those cases. I would rather leave it up to the DA's office and say it is your call, you tell me what you want to do. Unless I have some sort of evidence: bite marks, scratches, [or] something to indicate a struggle, then I am reluctant to just take someone based on someone's word, even if she is a righteous victim. I have had victims where people have been falsely accused.

You're not holding off on making an arrest in cases where you believe there is a case. We make arrests right away because there is no reason to lie. I don't want to give impression of being anti-victim but you have to be aware of victimology here.

The believability and overall elements of the crime are considered. If there is any doubt in our mind that it did not happen the way she reported it. We do not have doubt that the sex occurred, but we might doubt the rape. Example: [victim says] 'We smoked some dope, drank alcohol and I woke up naked next to the guy.' I will not make an arrest.

### **Pre-arrest charge evaluation by the District Attorney & Detectives' Incorrect Use of Cleared Other.**

On all crimes, if you have evidence you make an arrest. It [pre-arrest charge evaluation] is unique to sexual assault because usually there is no evidence. In most crimes there is no relationship between the suspect and victim such as burglary and auto theft. It makes it more difficult because there is most likely a relationship between the suspect and victim.

If we get a [DA] reject it should be IC'd. They write lack of evidence a lot but that poses a problem for us in clearing the case other. The detective manual [citing the FBI/UCR] says you have to have sufficient admissible evidence.

The above quote is notable as an outlier because only two<sup>74</sup> interviewees accurately interpreted the FBI's guidelines that "DA rejects" cannot be cleared exceptionally<sup>75</sup> (with the exception of the victim refusing to prosecute *if* the other three criteria are met) because by virtue

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<sup>74</sup> The other stated, "If the suspect is not in custody, the DA can issue an arrest warrant. If the suspect is not in custody and the DA rejects the case, it is always investigation continuing."

<sup>75</sup> However, a few other detectives correctly interpreted UCR guidelines that once a suspect is arrested the case is cleared by arrest: "I haven't seen any [cleared other cases] yet. Most are cleared by arrest or IC and only IC because the victim is not cooperative and I haven't been able to confirm who the suspect is. As long as he is arrested it is cleared arrest." Another stated, "If I arrest and then the DA rejects, it is still cleared by arrest. We do not change the clearance code."

of it being a reject the third criteria of probable cause to arrest is not met. The same logic applies if probable cause exists but rather than making an arrest, detectives choose to present the case to the DA and they receive a reject for insufficient evidence, except this process also violates the fourth criteria because it is within—not outside of— police control to make the arrest. The key point is that it is unclear why law enforcement clears, or counts as “solved,” a case in which they did not make an arrest and the DA declined to file for lack of evidence. Aside from the minority of interviewees who stated that they make probable cause arrests<sup>76</sup> based on a thorough investigation regardless of victim/suspect relationship and without consulting the DA’s office beforehand, the overwhelming majority of detectives stated that: (1) nonstranger sexual assault cases are resolved by “taking them to the DA’s office to let them decide”; and (2) they close cases that are DA rejects for lack of evidence as “cleared other.”

We begin by providing detectives’ explanations for the pre-arrest charge evaluation process. It is important to note that a few detectives expressed surprise at the question of whether a pre-arrest charge evaluation process occurs, and emphasized that the appropriate way to investigate is to arrest with probable cause and interview the suspect. For instance, one detective stated “I am hoping that is not being practiced.” Another stated rather emphatically that: “No [that does not occur]. The DA requires some type of corroboration. In order to get that corroboration you have to arrest the suspect and interview him. They are not going to cast out warrants based solely on the victim’s allegations and the fact that I can say that the victim told me the same story.” This statement implies that taking the case to the DA without sufficient

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<sup>76</sup> Of course there are scenarios in which delaying an arrest would be appropriate. Findings from the interviews clearly indicate that there are two types of detectives who work sex cases that are differentiated by the extent to which they understand the complexities of and enjoy working these types of cases and with this population of victims. Thus there is a difference between a detective who delays arrest in service of a thorough investigation versus one who “takes the case to the DA for a reject” under the inaccurate perception that having a lack of evidence is a basis to rightfully solve a case.

investigation and having refrained from taking the most action against the suspect that is within the discretion of the police—arrest—actually lessens the likelihood of the DA filing charges. For example, another detective, while noting that case “drop offs” occur at other “sex tables,” stated:

But a lot of detectives arrest off a crime report before taking it to the DA. Also, sometimes we learn if you have a body in custody they’re more inclined to file. It’s the time element, he’s right there, so it’s easier to go ahead and file. It’s so much more contemporaneous. I don’t even like to talk to victims at home. We want them off balance a bit so it’s better to bring them in. I won’t talk to them in their house. Psychology has a lot to do with what we do in these cases. That doesn’t make any sense to me to go to their [suspects’] house [for an interview]. If they’re comfortable then they will be comfortable lying and denying. Part of an interrogation technique is not to let them be comfortable in the denial. The idea is not to allow them to deny so if they are already comfortable they will lie. It’s like a home court advantage.

Echoing this sentiment, another detective stated that:

My practice is that I don’t present it to the DA prior to making an arrest. If I have probable cause to make an arrest, I will make an arrest. Even if he is going to be out in forty-eight hours, I think that it is important to send a message to the suspect and to ensure that the suspect has a criminal history. Also, by arresting him I get him in the DNA database so that if he does it again we can link him to earlier cases. But this does not mean that I will arrest just anyone. I have to have probable cause, strong probable cause to believe that he is the guy who committed the crime.

Along similar lines, note the irony that the detective begins by asserting there is no difference in the treatment of the case if the suspect is in custody or not, while simultaneously stating the benefits of a DA being able to “write a reject” without having to “worry about the clock” if a suspect is not in custody:

They handle it the same way whether there is a body<sup>77</sup> or not. It still gets filed in the same way. It’s just whether we have to deal with a body or not. It makes it easier for everyone if there is not a body involved given the time constraints. Granted you could time it as such so it is convenient for you, but we also have to recognize the DA’s office is busy as well and it is easier to look at a case at their leisure rather than saying look at it now given the body will be released in a few hours. They may have court, etc., and things they are tied up with. They can read it [the case file] at their leisure and write a reject at their leisure without worrying about the clock. A lot of it just comes down to a time issue and

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<sup>77</sup> Police jargon for when a suspect is in custody after being arrested. The district attorney then has forty-eight hours to make a filing decision.

recognizing that every time you go out and arrest someone you are creating more paperwork and more time involved and if you ultimately know what the end result will be why would you go through that process.

These statements suggest that discretion to arrest versus doing a case “drop off” is tied to one’s desire/belief that a case should be prosecuted:

When we arrest based on a crime report we have to submit a probable cause determination to the judge and that was put in place because the judge wants to look over the elements and determine whether there really was a cause to determine. DAs and judges can’t really tell us, which ends up giving detectives discretion. Sometimes if we’re unsure we have what we call drop offs, in which we present paperwork to their office and they’ll tell us what to do. Either they’ll submit for warrant or they’ll reject it. We do that with unlawful sexual intercourse cases. We’ll submit knowing they’ll reject, that way the suspect doesn’t have an arrest history of something the female is also guilty of.

The following statement is troubling because common sense indicates that a DA will not issue a warrant if a detective submits a case with no evidence. It implies that for some detectives the pre-arrest charge evaluation is mistakenly viewed as an appropriate way to dispose of cases due to a perception that they may clear the case “other” if a DA rejects for a lack of evidence.

If we do not have evidence we present a case so they can give a warrant to make an arrest. You want to discuss with the DA because they help you out. If I have enough evidence I can make an arrest, but there are times where there is not enough evidence in the first place or there are conflicting statements so there is no way of us to determine so the DA may reject.

This perception is also shared by other detectives:

Sex crimes is the only area left where we can subjectively make an arrest, not like DV. If I’ve investigated a case and I think all things being equal the suspect should not have an arrest jacket put on him and I know that case will be rejected anyway, I am going to take it to the DA’s office and get it rejected. If I feel the suspect is a predator and I can’t make a case at DA’s office then I will arrest and have that history on him. This way if/ when he does it again there is a history. Hopefully you have someone with our experience overseeing this. You need people with experience to do this. Will this guy banish from sight and flee to Mexico if we don’t arrest him? I don’t feel it’s right to arrest someone if someone has said without any other evidence that I was a victim because it is such a social stigma to have something like that on your record.

If we have a credible victim, and we feel based on everything we have investigated that it happened, and it is secondary to us whether they will file, then we will arrest. I have learned this, if you want to arrest and you don't think it's going to get a filing don't go the DA's office. [For example], I had a case that was very difficult. I had a telephonic conversation with the DA who said there is not enough to file I said ok and got more and spoke to him [the suspect] and arrested him. I had to swear to a judge I hadn't received a formal reject, which is a Charge Evaluation Worksheet. A smart DA will say 'We don't give booking advice.' ...[To decide arrest] we look at the type of guy who is being investigated. Is he going to come up in the future? Is he going to harm others? Is there anything predatory about his nature? Does he have a paper trail? If he has a history, he needs to be booked [but] we don't do that in every case. Every Division does things different and there is no control over that. For a detective to go to a DA for booking advice is a weakness, you should be comfortable with the elements of the crimes you are investigating to make a decision. It's a factor of support and experience. As a new detective I was told to call the DA for booking advice and the DA said we don't [give booking advice] and my D-III was embarrassed. The grey area is the elements of the crime plus the suspect's background. We do it [arrest], but not often. We say this guy clearly needs to get booked. Example: sixteen year-old partying young adults. She's drunk and agrees to have sex with one of them [four guys she was with]; then the other three decide to join them. We knew there was no way the DA was going to file, but we booked them. We knew the DA wasn't going to file but we booked the other three because they took advantage of her. Another example: we had a one on one acquaintance case today where we totally believed her; he was nonsense, but we didn't book him. He has no history, there doesn't seem to be anything too predatory about him; he took advantage of her while on pills. He said she agreed to have sex with him. We believed her, so we left the decision to the DA. Yes, so it does happen.

Given that when case is rejected for lack of evidence it is not solved and must be kept open (known colloquially within the LAPD as IC'd), this raises the issue of the types of investigative skills required to overcome the evidentiary challenges particular to "he said/she said" cases. A detective spoke to this:

[DAs do not send back cases for further investigation] to me personally because I have been doing this for so long. I know that they reject cases from [various Divisions] because they are so crappy so they will just immediately reject. For the majority of our cases it is the investigator. Most sex crimes are hard, [some involve] kids, victims are difficult to interview, there are never any physical findings, and people don't immediately report. It is a matter of people's statements. I learned that as a young detective. After all of these rejects you begin to think like a defense attorney and you shut those doors and then bring the case and they [the DA's office] are like ok [we'll file charges]. If someone [a victim] is going to the trouble of making these allegations it's not easy, and I'm going

to treat them [the suspect] as guilty until proven innocent. If I don't go looking for it [evidence] I'll never find it.

We previously reviewed the importance of interview skills with victims, but it is necessary to report that while many detectives emphasized that he said/she said cases are resolved via a DA reject, others, like the above detective, focused on people's statements; specifically, the critical importance of interviewing the suspect. As one detective stated, "You have to be really good at interrogating people. It's a standing joke here. My lieutenant says I hope I never get in trouble for anything, as I'd roll over on me." Similarly, consider the following examples:

If it seems like he [the suspect] is trying to blame the victim, we will use that as a theme. We will pick up on that and try to make the suspect think that you are sympathetic, that you think that they are regular Joe citizen, they will be more willing to talk to you.

You earn your paycheck by interviewing suspects and attempting to get them to admit the crime. If I interview the suspect, I will come across as his buddy, his best friend. I will try to gain his confidence by telling him that I, as a man, understand what happened. I know how these young women are and I know that some of them, despite being fifteen or sixteen look and act like they are twenty or twenty-one. You would be surprised how much they will tell you if they believe that you are sympathetic. The first thing is to get them to open up to you. Say to them 'we all make mistakes. I am a man, I understand how this could happen.' Then they will break down and sing like canaries.

More often than not, suspects will talk to us. They don't want to talk to the arresting officer who put him in handcuffs and booked him; that officer is the bad guy. Then I come in a suit and if they are falsely accused, they want to clear things up. Even some who are rightfully accused want to talk and want to be heard.

There are many different tools you can use: cell phones, phone records. Some situations, depending on how long from the time reported to the incident, you can do a cell phone dump. Let's say it happened by Rampart station, you can take info from cell tower to see what comes back. Computers also, you can search her computer, emails, Facebook, MySpace, and do pretext phone calls. If it's a borderline case and you feel it occurred you can arrest the suspect and put him in with another suspect at the jail to see if he talks about it. Also, stimulate them, and see what phone calls they make. Usually they'll call a friend or brother and talk about it.



We try a pretext and hope he was not made aware of the police report. It's better if he doesn't know about it. We talk to any possible witnesses and we review the medical reports to determine if there is anything unusual such as weird injuries or anything that can be tested. Mostly we do a pretext phone call, which unfortunately is very uncommon and too many people know about it. Once it's on the movie of the week it is kind of out there. We use the polygraph quite a lot actually. A lot of times we try interrogation first. You have to have confidence in interrogations first. Interrogations take a lot of experience to perfect. If an interrogation is conducted skillfully they confess a lot. It is a technique that needs to be refined. I asked an expert from polygraph to come and do a training. It was outstanding and helped. It's a skill that not everyone can do. You have to utilize it after the poly anyway. A poly is not admissible. Then after interrogation by the polygrapher the detective goes back in. It depends on the skill of the examiner and if the suspect relates to them. Sometimes the polygraph wears them down and the detective then gets a confession.

What works well is a pretext phone call and over the years I have found that works in terms of what will make the suspect say that happened. We always call the suspect in and try to interrogate him and get him to admit. The polygraph works too as an interrogation tool in getting people to admit it. That's worked before. I had a school bus driver molesting a special ed[ucation] girl. People were writing to me from the community saying how great he was, swore he loves kids, etc. I asked him to take a poly and he finally admitted it. You have to try to work hard and get what you need.

There are two things we do. The first is a pretext call. Let him admit that she was really drunk when they had sex. Let him admit that he did something wrong. We can also set up a polygraph if available. It is a difficult resource to obtain. We have used them and they were very successful. The policy is different when setting up a polygraph. The polygraph people want the person to have a good night's rest beforehand. We have to set up the poly two weeks beforehand and then make sure the suspect comes in on that day. Trying to set up the polygraph with the suspect is difficult. We have the suspect come in for an interview an hour before the scheduled polygraph and ask them, 'Would you be willing to take a polygraph? We can call to see if one is available,' when in reality they have one ready and set up. It is all planned. The problem is we cannot do a hard interview before a poly because it can mess up the poly outcome. We do a soft interview and get them to deny allegations and then set them up for the poly.

Another detective stated that in addition to interrogations,

Most of the time there is something else that can be done. It is rarely done that a detective puts in a request w/ SID for an examination of clothing for signs of force/distress such as jammed zippers, etc. Pretext phone calls help but they are getting more commonplace and the quality is not always good. Suspects become more aware of that as a tool. We do not have any training on social networking sites. We should do more training there. That has to be jumped on to secure that evidence. Text messages are only held for thirty days unless we put a preservation notice out. Pretext phone calls are less helpful and should not be an investigative tool because they are put in reports and the defense gets them.

These losers [suspects] know about it. We need to move forward and instead of staying in the [19]90s we need to get texts, phone records, [evidence from] social networking websites.

These statements demonstrate that interrogation is a skill which must be developed and practiced, as well as gathering evidence from the internet and other electronic means. Many detectives noted that the pretext phone call, while helpful, requires strong partnership with the victim to effectively execute, and suspects are increasingly aware of them as an investigative tool and subsequently less likely to talk. Detectives stated that ongoing training in these types of skills are especially critical to investigate nonstranger sexual assault cases given the frequency of delayed reporting and the lack of physical evidence.

Finally, when asked the characteristics of cases that are cleared other, the most frequent responses were DA rejects for insufficient evidence, and victims who do not want to prosecute. One detective encapsulated it as “He said she said with no other evidence, which is great majority of cases we are faced with.” Other examples include:

Cases that are rejected, cases where a young woman goes to a night club and gets drunk. She doesn't know who he is, maybe he's a friend she went to the nightclub with, and wakes up the next morning and cannot remember what happened. Unless he admits he rapes her, and typically they say it was consensual, there is no way for us to prove it wasn't consensual. Sometimes victims believe they lost consciousness and they do not believe what transpired because they sometimes are seen on video surveillance walking out and they think they blacked out. I have seen on pretext calls where she calls the suspect and he will say each event as it unfolded and she does not remember them. So drinking cases are the main reject. If they saw themselves, most of the time it's just a blackout, and there is no way to know. For the suspect it is the same thing. Is it fair for someone to be convicted if they believe she was fully conscious but was not aware the next day?

Those are the ones that we do not have enough evidence to prove beyond a reasonable doubt. Most of those cases we have discussed with DAs and they make the determination to clear other. We almost never clear other unless having discussed with DAs.

The most common is the ‘infamous DA reject’ due to insufficient evidence. The second reason is victim refuses to prosecute or refuses to cooperate to the point you cannot

proceed any further. Those are the two situations/scenarios that generally make a case get cleared other.

The majority are acquaintance/date cases. It is easier to say which are filed: stranger cases because there is no relationship. You'll always get a filing in stranger, and you'll get one in spousal rape. It may not be the rape but if there is injury they'll file some sort of DV charge. Absolutely, unequivocally, if the victim refuses to prosecute or have a SART exam the case won't be filed. Sexual assault victims have unusual rights. They don't have to take the exam, and they are allowed to not let it be released. Ninety-nine percent of all rejects will be a prosecutor saying insufficient evidence.

Cleared other cases when we have a named suspect but there is not sufficient evidence to go forward. Lots of these are her word against his. There are no witnesses, and no physical evidence, so it would be hard to take that case to court and prove it.

When the case is rejected by the DA's office. We can't clear the case cleared other unless we have the suspect Id'd and the DA has rejected the case. Per our department guidelines we cannot clear the case by arrest unless there is a filing to substantiate it.

We have to run it by a prosecutor, either a DA or a CA [City Attorney]. We don't clear anything as cleared other on our own. That has to come from the DA.

Usually DA's reject cases because there is no corroborating evidence, and it's a one on one. Usually those are cases that get rejected.

Detectives stated the following regarding victim cooperation as a reason to clear other:

Ones where the suspect does not have a criminal history or a propensity for sex crimes, and ones where the victim either refuses to cooperate or disappears after making the report. And ones where the victim has some type of criminal history that makes them not as credible.

Where you have a suspect who is not in custody but you have enough to present to the DA's office, but the victim is unwilling. Victims have the last say-so about what is going to happen in their case. You may have a great case but if the victim does not want to go forward it is a cleared other.

Where you have a female saying 'I just want to forget about it, move on, and I don't want to have to go through the process of going to court and testifying.' Those excuses. Some are excuses and some are true. Those ones were probably lying in the first place. There are ones who really do say that and blame themselves, etc., and it may have happened, but for whatever reason they can't deal with it and we concentrate on counseling for them. [Detective estimates that] two out of ten victims won't want to go forward. We're good at convincing people you need to go forward. It depends on your investigator. A lot of people say 'You don't want to? Forget it, ok, fine,' because it's more work. But if

people are passionate about their job we keep it forward. A lot of times these guys will plea out and we don't have to go to court.

Often they [victims] do not want to [prosecute] because they are in a new relationship and have never told the person about their past and being a victim of sexual assault. Or we have victims who do not want to relive the experience by telling a new detective or going to court to be exposed again. We even get victims who do not want to prosecute because of financial reasons; they cannot take time off from work. Other reasons are because they do not want to miss school or have childcare issues. For example, I had a recent case with a twenty-two year-old victim who had daughter and never told her family. She found it difficult to open up and explain that when she ran away. At fifteen she was a victim of rape in Hollywood and now she has a daughter. What would she tell her family when she had to come back to LA to testify because she now lives in Texas. The DA wanted to fly with the detective to Texas to get the victim to prosecute. Often times DAs will say 'oh well, on to the next case.' I applaud the DA in this case.

Often victims do not want to endure the process, which leads to a DA reject because of the unavailability of the victim. For example, prostitutes will make the initial report and then we cannot find them. Wait! Those should be IC. Based upon my experience with new detectives, the DA's office changed their reject form. In the reject form there is a letter "K" for Further Investigation. There are other cases saying "cleared other, reject" when in reality it should be Investigation Continued saying 'I am waiting for these things,' so they should not be clearing other. This is happening because this is how they are being taught. Instead of A students we have C students who are being told to do something by someone else. Supervisors who should know better are pushing things through. The other reason is 'he said/she said' cases. Do NOT worry about DNA! Focus on the status of clothing: underwear, zipper, injury. Follow up on injuries that will not show on day one but may show on day three. Non-thinking detective work that goes on autopilot should not. It all goes down to a lack of training. Supervisors are not helping at a Divisional level because they have come into a belief with a false case and unbounding as being synonymous. [They say] 'she made it up because she did not want her husband to find out, or drank too much and did not want to be seen as a slut.' Shitty work means DAs not filing which means more cleared other. [We are] advocates of the truth as a detective, not a victims' advocate. My mindset is always one of going to trial. How do I do that? You have to train, practice, and certain things have to come on autopilot. Most of our job is very routine, step-by-step, and methodical. Documentation is critical and none of it is being done. Any idiot can clear a case other. Sex detectives used to be like homicide detectives. Cleared by arrest [DA filing charges] was the goal. Now it is rare to see someone sit thru a trial as an I/O. If there is an alibi witness for defense, etc., I value it. Often I/Os are encouraging the DA to take a plea. That is crappy work in my book.

## **THE DECISION TO UNFOUND**

It is really tough for me to say that a case did not occur. You would have to have corroborating evidence that it did not occur. If the victim recants, the detective will

sometimes unfound the case based on the recanting even if there is physical evidence to counteract the recanting. You see cases where years later they say it did not happen but you find DNA. I definitely have an open mind when I go into these investigations because you never know.

The victim does not have to recant to unfound. But if the victim does not recant we will have to prove that the incident did not happen. Example: an elderly woman said she had been assaulted inside her residence. The suspect would have had to open the door with three separate keys to get in and she could not explain how he was able to do that. We later found out that she was taking medication for a mental problem. We could have unfounded but we opted not to. We left it as I/C.

The final investigation related questions centered on the decision to unfound a case. To begin, FBI guidelines on clearing cases for Uniform Crime Reporting purposes state that a case can be unfounded only if it is “determined through investigation to be false or baseless” (UCR Handbook, 2004, p. 77). The Handbook also stresses that police are not to unfound a case simply because the complainant refused to prosecute or they are unable to make an arrest. Similarly, the IACP (2005) policy on investigating sexual assault cases states that “the determination that a report of sexual assault is false can be made only if the evidence establishes that no crime was committed or attempted” and that “this determination can be made only after a thorough investigation” (p. 12). Both sources, in other words, emphasize that the police must conduct an investigation and that their investigation must lead them to a conclusion that a crime did not occur. It is important to note that the totality of evidence is required to unfound; whether a victim recants cannot be the basis for closing a case this way because, as some detectives noted, just because a victim recants it does not mean that a crime *did not* happen. Similarly, a victim can insist that something *did* happen but evidence can point otherwise. Finally, and perhaps the most straightforward, the police can unfound a case if a case happened outside of their jurisdiction so as to not have duplicates.

An important context to this discussion, which was noted by many detectives, is that currently more paperwork and multiple levels of review are required to unfound sexual assaults due to an audit that found cases were being inappropriately and excessively unfounded. Given this framework, the first trend in responses about when a case can be unfounded reflects an understanding of the guidelines. For instance, a detective stated that a case will be unfounded “If the victim recants and there is clear evidence that the crime did not occur. It is unlikely that the case will be unfounded if the victim recants and the evidence indicates that a crime did occur.” Highlighting the role of more senior detectives to the investigative process, a newer detective stated “I don’t decide to unfound a case. We go over everything with our supervisors [and unfound if] all angles were covered and all of our leads are completely opposite to what the victim says that prove that it did not occur.”

When asked about the role of recanting in the decision to unfound, a detective said “Oh hell no. Victims recant all of the time.” Another emphasized that:

“Many victims recant because of the attitude [by the police] that is being perceived [by the victim] in dealing with the investigation. They are tired of dealing with it, and they want to go back to normal. [Victims often] feel responsible for stresses that have emerged. A victim recant can be used but should be corroborated and followed up by a detective. The next question should be where were you then, and seek that corroboration and clarification to make sure the recantation is valid and not being driven by another alternative.”

Along similar lines another detective stated:

“That [recanting] happens a lot. A victim comes in and says nothing happened but we know [that a crime occurred]. We have been doing this too long. Whether it is abuse by a boyfriend and she comes up with a story of a stranger to protect her boyfriend or fear of gang violence. A lot of girls ditch school and hook up with these guys. We will never unfound a case when we know something happened. It is very rare to have a false report.”

Others affirmed that recanting alone does not justify unfounding. For instance, a detective stated that “Sexual assault is such a sensitive subject. A large percentage of victims are under the

influence of some type of substance. A very small percentage of cases are unfounded because there is some kind of evidence that nothing happened. It is very rare that we unfound a case. It is not mandatory but probable that the victim will recant.” Also emphasizing the importance of an investigation, another detective stated that “[In my Division we get] a lot of girls coming in who ditch school, hang with a boyfriend, get in trouble for being late, but say they were raped because they do not want to get in trouble. If speaking to witnesses we corroborate the victim’s story that it did not happen then we will unfound. If she says it didn’t but I think that it did you have to follow the evidence.” Similarly emphasizing that a thorough investigation is key, this detective offered a previous case example:

I had a woman who had a boyfriend for many years. According to her he helps her with money, and she moves a lot. She’s got issues, and she’s one of these people who starts very credible initially but the more you spend with her the crazier she sounds. I got this case where she was claiming he was scaling walls to see her. Long Beach PD had a rape case with her saying the suspect puts fleas and lice on her...and she stated he stole her medication. During our interview with her she calls him. I confronted her and she said she hadn’t called him. It takes a lot to unfound something. We don’t just say they’re crazy, etc. You have to spend more time unounding because you don’t want to unfound something unnecessarily. I had to get the Long Beach report, speak to the officer who investigated it, and I talked to the boyfriend. She was very...hard to interview and she was all over the place. I was satisfied after the investigation that nothing happened. All of her cases had been unfounded. [Even] her son said it didn’t happen. I had to warn the boyfriend to stay away from her. It is important to keep notes on DCTS.<sup>78</sup> We don’t just unfound irresponsibly.

Finally, a more senior detective offered insight related to challenges of reclassifying crime categories that sometimes comes along with unounding:

[The requirements to unfound a sexual assault are] the same for any crime: if it was reported more than once; duplication. For example, a teenager makes a report that she was assaulted after school. She gets home late. Her parents think she was ditching and take her to station as she says she was raped but she had already reported. [On a crime report the] year and 99 means outside DR. If LAPD cannot verify where it occurred then they are tasked with the investigation. Another reason to unfound is if the crime occurred in an outside jurisdiction. The last reason to unfound, the department has a problem with this, but it is getting better. We can unfound if a case is found to be baseless in its totality.

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<sup>78</sup> Detective Case Tracking System.

For sexual assault: was the act false, meaning did it not happen? Was the suspect false or the circumstances false? Two examples: (1) girl made rape report saying that two guys kidnapped and raped me in van after school and dumped me across town. We take the report and investigate. It turns out she was walking home and met up with her boyfriend. They went to motel and they fought and he wouldn't give her a ride home. If she is under eighteen and sex occurred but a kidnap did not occur and the circumstances are the boyfriend is thirty-two and she is sixteen, what we should do is reclassify it as unlawful sex. But what we see detectives doing is unbounding the report but not dealing with the act.

Other detectives stated that rather than unbound, they preferred to let the DA make the decision regardless of what the victim's statements and the evidence suggest:

If the evidence points to the fact that a crime did occur and the victim says it did not happen, you would present that to the DA and let the DA decide whether to go forward with the case. If the physical evidence shows that it did happen but the victim says it did not, you present all of the evidence to the DA.

It is helpful. If they don't, or are insistent it happened and we can't prove it then we can't unbound it. Then we can present it to the DA and let them do what they're going to do.

For me the victim has to recant in order to unbound. If I don't believe her (recantation), I will type it up and present it to the DA. Hopefully, the DA will not reject it or at least will present it the city attorney as a misdemeanor.

I take unboundings very seriously. Generally rape victims come forward because they want something done. Unbounding for me, that is touchy. I believe all my victims until I can prove that they are not telling the truth. Say someone comes in and they are upset with someone, I try to find out why. If the victim says that it did not happen, I still present it to the DA and he or she will decide. They will reject it, of course."

I would not unbound if the victim recanted and the evidence suggested that the crime did occur. But the DA would reject it, absolutely.

[To unbound we need a] recant by the victim, where she denies what happened. We do not like to unbound reports. But the stories are so outlandishly wild. Victim recanting is critically important in unbounding cases. Even if we think it is a lie [the victim's story] we will still present [the case to the DA].

If the victim recants but it is clear that something happened, it would not be unbound. A case like that would not meet the criteria for unbounding. However, it is probably another case that would end up in the DA's office and they would reject it.



If she recants I would still present the case and let the DA decide. That would be a cleared other. If she tells officers she was raped and evidence supports it, it would be presented with an extra line that on whatever date she recanted.

[Recanting is] not necessary; that's the norm. If I have a victim that is still saying it occurred but I have overwhelming evidence that it did not, I can go seek an unfounded. Example: I have one currently where I have a fifteen year-old claiming her cousin's stepdad touched her and there were people in the room. It just did not occur. Her cousins were there and it just did not occur. I haven't spoken to the victim yet to give her a chance to recant but if she doesn't then I can seek an unfounded if I have the evidence to disprove it. If she still stuck to her guns I would present to the DA. This is so it covers and shows that I did my due diligence. There are ten eyewitnesses saying nothing happened and we never saw this guy come near you. The other evidence is the fact that she's making it up to cover her promiscuity with her mother at home. It's more work in that case to do an unfounded than to take it to the DA and they'll reject the case. I haven't interviewed the victim [in the referenced case] yet.

Other detectives emphasized that recanting is a requirement to unfound:

The case will not be unfounded unless the victim denies that it occurred. If the victim says that she lied or made it up. In my experience, every case that I have had to unfound has been a case where the victim lied. As long as the victim continues to insist that it happened, we will present the case to the DA.

We try to get the victim to recant. We present the conflicting evidence to the victim and try to get the victim to admit that it did not occur.

The victim does not have to recant. But they can recant and I will unfound it. It helps if they do. It saves a lot of time.

The ones that are unfounded they say I lied when we finally break them down and they admit to what they were really doing. If they're not being cooperative and haven't admitted to lying. We can't unfound those. The ones that admit to lying. Sometimes they just report it but don't want to do anything further.

If the victim recants it will be unfounded. In the six months I have been doing this, I have not had many where it was unfounded. I've had two cases, both in which the victim recanted.

Even if a case is unfounded, if additional evidence is found can be reopened. It is not carved in stone at the point. The only time I unfound is when I can prove that it did not happen and the victim recants.

The preceding statement is problematic because if that case were to be reopened, for example, through a DNA hit, a defense attorney could capitalize on a police clearance issue to undermine

the victim's credibility and attempt to raise reasonable doubt. This underlines the fact that detectives' decisions about how to investigate, classify, and clear cases have significant implications for the viability of their prosecution:

The only way we can unfound is if the victim tells us it did not happen; there is no other way. The victim has to recant to unfound the case. She has to tell us that she made it up, she lied. If we have enough evidence to substantiate that in fact she did make it up. If we think differently, we would keep the case open as I/C.

Here we are very strict. A case is not unfounded unless the victim says it didn't happen. For example, a teenage girl who ran away from home and left school and didn't want to get in trouble. Once we get here and start doing the interview the stories don't match and story doesn't make sense. Sometimes they will come forward and say I completely made it up. But if she sticks with the story those will be I/C.

Unfounding should be really rare unless victim recants. We had a victim who ended up saying 'No, I don't want to do anything.' She didn't say she made it up but she said it didn't happen that way. And then the suspect came up in a second crime report and we spoke to her again and she said she was fearful of him which was why she said it didn't happen. Victims lie for different reasons, but not because they were not victims. They'll lie because they think the truth might make them look bad, i.e. 'I was using drugs,' etc. We have to get through those barriers with victims. Those types of lies are very explainable. And then some just plain lie about being the victim of a rape. They were caught by a husband, caught cheating, and got home late. I haven't seen a teen/white van in a while. It was a trend for a while. Saying someone put something in my drink was a trend for a while and now it has fallen by the wayside. Very odd.

Ninety-five percent of the time to unfound you want a victim to recant. There is going to be a certain amount of unfounded with teen victims. Teens more than adults will stick to a story no matter how much evidence is thrown at them. You may find conclusively that something did not occur, i.e. a camera shows she was not there at the time, and she will say blindly 'Yes, I was there.' You have to build evidence in this case to show it couldn't have possibly occurred. The same will show with mentally ill cases. We have done a great thing with the Undetermined Sexual Assault report where something is placed in a non-crime report category and either upgraded as a crime report or left as is to say there is no way a crime occurred. For instance, 'I woke up with my underwear on backwards. I think I might have been raped.' That would be Undetermined. If we go as investigators to find out what happened, to see who was in the house, are there signs of break in, it could be upgraded to crime a report. But if she says no one was here, no one lives with me, then that case would stay as an Undetermined Sexual Assault non-crime report. This form started in 2010, January. Prior to that we were putting them on injury reports and having to unfound them.

Finally, we asked detectives to provide examples of recent cases they had unfounded:

I had a victim who made a report that she had been assaulted inside her residence. She gave us a composite of the suspect; the house had been ransacked. We took the lead and investigated. A month later, she makes another report. This time she says she got in her car and there was a man inside who threatened her life if she said anything about the sexual assault case. She gave us the route the suspect took her through and said that he stole her jewelry. We impounded her car to see if there was any prints, any evidence. When we impounded the car we discovered that the vehicle had an alarm system and the back doors were childproof. We came to the conclusion that someone who was in the back could not get out through the back. We re-interviewed her and she confessed that she made it up because she wanted attention from her husband.

One case involved a young lady who refused to come down to talk to us. She said she went to a liquor store and bought something. The person who raped her was in line in front of her at the store. She said that she saw that man standing by an RV. He pulled her into the RV and attempted to rape her. When we went out to interview her, we could tell that she was not telling the truth. We had a video from the liquor store and it showed her and an old man. We found the RV and she said that she was pulled directly in but there were steps so that there would have been bruises on her shins but she had no bruises. Based on her reluctance to help us, wanting to say it didn't happen because she did not want to talk to us, and the other evidence, we unfounded. She would say, 'If what it takes for you guys to leave me alone is to say that it didn't happen, I will say it did not happen.'

A prostitution case where a victim makes up an allegation that she was raped. Officers follow protocol and take her in for a medical exam and then later on when the investigator gets the case, she admits that it was a business deal gone bad.

Recanting is not required. I had a recent case involving video surveillance in a room at a mental hospital. She said that she was assaulted but there was nothing on the videotape from the room. That case was unfounded.

A younger girl from valley who reported that she was somewhere downtown walking on street with friend. They woke up and they were both tied to beds naked. There were a couple of guys who raped them, covered their heads, put them in a white van, and dropped them off on the freeway. When we talked to one of the victims, she insisted that something had happened. We presented the inconsistencies in testimony to the victim and eventually she admitted that she ran away from home and made it up. She could have been arrested and prosecuted. If she admits the truth early on and we don't have to waste too many resources or if there's an arrest, which is a false arrest, we will file charges and the City Attorney's office will pursue.

The victim was in high school and she and her girlfriend decided to ditch school. They accepted a ride from a friend and were dropped off at a friend's house. They said that they were picked up on the street and the guys drove them around and raped them repeatedly. They said that the suspect was a gang member. I sat down and talked to the

victim and found out that the story was not true. They went to the beach, got drunk and had consensual sex and made up the story so that mom and dad would not get mad.

I had another victim where she said that the suspect had covered her mouth with some type of chemical and that she fell asleep for twenty-four hours and was sexually assaulted. We got the opinion of doctors and nurses regarding the symptoms. A lot of it is timelines and the evidence that doesn't add up.

For the most part, we don't unfound sexual assault cases. However, I did have one a couple of weeks ago involving an eleven year-old girl and a twelve year-old boy. They were playing spin the bottle with some other kids and one of the kids suggested that they take their clothes off and have sex. She said that is what they did. But the SART exam revealed that there was no physical evidence. When I interviewed the victim and the suspect separately, they both told me the same story: they were playing spin the bottle and they kissed and took off their outer clothing, but that is all that happened. The fact that their statements corroborated one another, coupled with lack of physical evidence led me to conclude that a crime did not occur and the case was unfounded.

I haven't seen one since I've been here but while on vacation my partner had one involving two kids, the victim was twelve, the suspect thirteen, and his friend. The victim was in the house with her mother and local neighborhood kids. The victim goes against her mom's wishes and sneaks out of her house to play with two boys. They played truth or dare he dared her to have sex with him. She did. The mom noticed the victim was gone, found her, and pulled her in. My partner spoke with the victim and the suspect and determined the sex acts were consensual, thus the case was unfounded.

Sixteen year-old girl said she was at the movies and said a guy came from behind and grabbed her and raped her in the bathroom. At 10:30 at night at a popular movie theater. I got called in, went to her house and interviewed her. She just turned sixteen and was with her boyfriend and started having sex with him and felt bad. [Unfounded cases] most often involve young girls who miss curfew or older women who tell a lie to husbands or boyfriends.

Overall, interviewees demonstrated two general perspectives about when to unfound.

Some emphasized that they will unfound if that is where the evidence leads regardless of whether the victim recants, but the rest emphasized that detectives should unfound only if and when the victim recants. It is important to note that many detectives emphasized unbounding seldom occurs, and some had no experience with it and only spoke of it in the abstract. It also became evident that some detectives are reluctant to unbound because of uncertainty as to the

criteria and concerns about political correctness related to the implication that a victim is lying. Consequently, they present the case to the DA knowing that due to lack of evidence it will be rejected. As noted previously, and although some detectives correctly stated that a DA reject for lack of evidence cannot be cleared and thus should be IC'd, the majority of detectives stated that DA rejects are cleared other.

The final section focuses on detectives' perceptions of how to improve the quality of sexual assault investigations and prosecutions, and we conclude with a discussion of policy implications.

## **HOW TO DECREASE DIFFICULTIES FOR VICTIMS WHEN REPORTING**

The department should move forward and recognize the level of specialized training required to get a case ready for prosecution. The DA's office should communicate more with higher levels in this department so they understand why cases aren't moving forward so they can address those limitations.

We have to play nice with each other. Often there are problems with each office in terms of trying to see eye to eye. For us, it's like they've been saying, we have this fishbowl policy so everyone can see what we're doing, but we can't look in their office and see who's making decisions. I never knew what a one-on-one crime was and that you can't file them. Is that in writing, or is that just what people say? They have our manuals but we don't have theirs. As long as the parts are working together, we can get them through the process, and once you know the process you can get them through it.

We concluded the interviews by asking detectives what role they felt the police and district attorney's office could play in decreasing the difficulties associated with reporting for victims, and how to increase the number of successful prosecutions if there were unlimited resources. To decrease difficulties for victims, detectives' statements focused primarily on elevating the importance placed on sex crimes by the department leadership, improving the police officer/detective level response, and increasing interagency collaboration between the police and the district attorney's office:

Change the importance placed on these cases. They cannot be a kicked to the curb case. Compare homicide and sex; sex is worse. Sex is worse. We've got task forces, etc., for autos but not for sex cases.

There must be a specific reporting protocol established. Detectives should not be pulled out of investigations to take preliminary reports, but a detective supervisor could be contacted to give advice on reports. [A] Bureau was having detectives respond to all calls; that would burn them out. But detectives should be called to a sexual assault scene to give advice. Victims should be the given name of a supervisor who assigns reports so they have someone to follow up with if they have not been called. Obviously that is easier to do with centralization. If I'm working sex crimes I'm answering the phone.

Rapport is critical for the investigator in terms of getting with the victim. That's why I preface my interviews with look, this is an important part of it, and you need to be completely truthful and not omit anything. I know you're going to forget stuff, that's fine, we're human, but developing that rapport with that victim so the bases are covered that way I get everything. Also when it comes to the investigator, hit all of the questions initially so we don't have to go through it again. Sometimes the victim is unwilling to and they've been through a lot those first few hours and need to do it later. You have to be flexible with your victim.

[The problem lies with] Divisions getting nonstranger cases [where the suspect] ID is known and the detective takes the case to the DA and gets a reject. No one tested the rape kit and the suspect argues consent. There is a big push to push all of these cases through then they reappear at RHD as a cold case. And nothing happens to spousal rapes ever.

Part of it is letting them know that we understand what they are going through and we are there to provide counseling if they need it. If family issues need to be addressed we try to work with them on those issues. Most often the issues are confidentiality based as family members do not know what has happened. Often victims will feel uncomfortable telling male detectives they aren't comfortable speaking with them.

I just think that, umm, and this is horrible because I worked patrol for a long time, and I was probably one of these officers as well. The thing is to not get jaded and realize that weird stuff does happen with regards to sex crimes and patrol officers are the first line of contact for victims and once they have bitter taste in their mouth it's difficult. Guys are nervous to handle it because they don't know how to talk about it and are too embarrassed to say penis, etc. I'm not saying women rule as there are guys out there that are fabulous. But fortunately/unfortunately patrol has first contact.

The DA's office will offer psych counseling. When we ask victims questions about what happened we're making them relive what happened. We think from our point yes we've got everything but the victim leaves devastated. I'm very conscious of that; it makes me feel bad. It would help if we had something here after interviewing victims to help them deal with that if they want it.

I think that [a Division] and [a rape treatment center] handles the cases good. They are so professional that it really helps the victim feel like they are getting the best attention. I think they help the victim overcome the emotional trauma with the rape. I told [a Chief] that we do not work with the sex victims enough. They have to live with the crime forever.

I wish I had a partner that worked just with me on cases and we would make a lot of arrests. On prosecution, I wish that they would not have such strict rules with one on one cases meaning that no matter what we will not file in one on one cases. Where does it say in the penal code that there must be a witness? We already know they're not going to want to and it makes me upset. That goes along with DV and we see cases rejected a lot by the DV DAs. I'm not sure what they're doing. It is really sad actually.

Sometimes we treat our victims horribly. We have them come in to this stupid room with somebody that they have never met before and tell them to tell us what happened. We do the best that we can. But I do not blame victims when they do not want to talk about it anymore.

The department needs to be more in tuned to what we need with DNA. Prioritize more. We do not track to see if DNA is tested in a timely manner. They need to realize what we need. We do not need to test the bed sheets for a spousal rape if they live together.

It really bothers me that so many inexperienced detectives with good hearts, some of these cases are being thrown away and not investigated properly and training should be required before anyone can work sex. The training put on by the department/RHD/SART/DA's office should be at least two weeks. A large portion of that would include child victims. Training starts with children who lied, and then they go into credible cases. You need to know and understand why people lie. When they do it doesn't mean a crime didn't happen. At a lot of Divisions the sex table is treated like the bastard stepchild; they take detectives away, flip them around, and make them work DV. I've been fortunate but sometimes I've been brought down to one to two detectives. Nobody cares about the sex cases unless it's a newsworthy rape case. And the department is hurting in terms of not being able to hire. When centralizing was done, it was just done so wrong. It was rushed together. We didn't have telephones for six weeks, and a lot of the wrong people were there. [Command Staff said] if you work in sex you're going, and some Divisions cleaned out the people they didn't want around anymore. Centralizing needs to start with core group and then grow. There needs to be a rank structure and training before getting a unit. It's human nature for people to take selectively what they want from training and we will always deal with personalities. The hardest part is dealing with a new detective, give the spiel and listen to their interrogation and a lot of times I'm going 'Ohhh god' But you can't be over everyone's shoulder. The difference with homicide is they want to be there, you work with a partner, there is mentorship, and partnership is great for how we creatively generate.

The second most emphasized way to decrease difficulties for victims was to have better interagency collaboration between the police department and the district attorney's office. The majority of detectives stated that this could be achieved by combining the detective and DA interview into one. Others emphasized a need for the police to better utilize advocates. The following examples are emblematic:

I had a girl from Northern California who said she was assaulted by her boyfriend's uncle one year ago. She was involved in a bad car accident, was in rehab, and this was her first opportunity to come to LA. She drove all the way here to file the report. I was off for two days and she wanted an advocate. I gave her the number for the local rape treatment center. They told her they only offered it to patients so she couldn't get one from there. Someone told her Divisions have advocates which was the wrong information because we don't, and victim assistance is only if the case is filed. She called a hotline and was told police departments have to provide you with an advocate. I didn't know what to do because she was coming. I told her to tell me when she was coming. She was adamant about saying she wanted an advocate. Someone I know from another Division is an advocate at a domestic violence shelter. She is a civilian and she sat down [with the victim] as an advocate. If an officer is in the field you read to the victim they have a right to an advocate prior to the report if you want to someone to sit with you. If through RACR or something they could send an advocate we need that for sexual assault.

Some DAs do a great job. [A specific DDA] is fabulous. Everyone is different; not everyone has what s/he has. You have to be more available for our victims, which can be time consuming and tiring. Some need more attention than others, for whatever reason, no family support, etc. Through the DA's office, or Victims of Crime, you need a person separate from person who does documentation; an advocate who works with police, not just the DA's office, who they can go to and just talk to if they have a problem or are not sure how to do something. It could be a civilian; someone to help out with those additional needs that are not really part of the case which are more personal. Advocates should go out with sex detectives. I know that seventy-five to eighty percent [of detectives] wouldn't want it but eventually they would get used to it.

We need to have more detectives. The DA's office is extending themselves a lot. They have made motions to interview every victim so they can be heard even if it is a reject. They are forwarding every report to their victim witness coordinator to ensure they get services so that is good. It would help if we had a special intake for people that wanted to report sex crimes where they didn't deal with your average patrol officer.

The DA, the counselor, everyone needs to be working together. Most cases go over in a big bulk. If we could have a DA here it would be a godsend. We could get everything done so much faster. They [the DA] want to meet the victim; they want to talk about it. Are they [the DA] doing a good job? Yes, it is just at a snail's pace.



Better interagency collaboration. Through CLEAR I don't have to do search warrants. I can get things immediately. Parole and probation give you the run around. With CLEAR it saves me time getting search warrant to get phone records.

We need more detectives to handle less cases and have more thorough investigations. The DA's office needs to be part of that equation because lack of more DAs creates a problem. A couple of months ago there was not a courtroom available to get our case heard.

## **IMPROVING THE INVESTIGATION AND PROSECUTION OF SEXUAL ASSAULT**

The final question asked detectives to describe the best way to increase the number of successful prosecutions of sexual assault if resources were unlimited. The overwhelming majority requested training, followed by investigative resources, along with elevating the department leadership's overall regard for sex crimes. The following comments are illustrative:

I have sex and auto theft and have to spend 75 percent of my time doing auto theft. My attention is now not on training sex detectives. I don't care about resources, I care about sex crimes. My job is to care about sex crimes. It is best for victims because they are being dealt with by people who have done this over and over. Each deputy chief should have discretion. [A member of command staff] said 'women and children are just another special interest group.' If we can't protect our women and children what are we doing here.

Everyone is so busy we are throwing detectives into the deep end. We need detectives who want this assignment. They must understand how different it is from other types of investigations. There is so much more emotion involved than even in homicide. We need more emphasis on training courses as well as mentors in the field; that is the biggest thing missing in so much investigator work. We need to work hand-in-hand with newer detectives. These are skills that are lost as the dept skews younger as a whole. Fifty percent of the department has under five years on the job. That's a nightmare.

Investigators need to be trained from both in and outside the department. Crime labs could use more help in analyzing SAEKs.<sup>79</sup> I spoke with criminalists and they need more assistance. All of this would increase our arrest and prosecution rates.

Training, definitely. The thing about training is that we're so busy. You should provide it on a Saturday or Sunday, or make it a regular work assignment so you won't get bombarded by cases or going to court. When we have quarterly training we often miss

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<sup>79</sup> Sexual Assault Evidence Kits.

because we have a custody, court, etc. You should bring the training to the Division at that table. Or within the Bureau. Bring training to the people, take time to travel, drive, etc., and make it more convenient for investigator. The focus of training should be: (1) Making procedures consistent because very Division is doing something different with DA's office when it comes to filing; (2) Ever changing situations with DNA. With in car cameras they came and gave training. Once a month, someone from SID should go to every Division and Bureau and discuss problems with request forms, cases, etc., so they don't have to deal with an audit six months later to talk about what we're missing. We need monthly training but please bring it to the detectives.

Training and specific hiring of sex detectives. Detectives should have to apply to work in a sex unit. There should be standardized, specific training. A lot of cases are lost because detectives do not know enough about how to investigate sex crimes, the elements, etc. I had a new detective who made a comment after working at another Division saying I get these girls who drank and then they want to report rape and what am I supposed to do? She had never heard about rape by intoxication. At a lot of Divisions they just throw someone in there who isn't interested and won't do a good job. It takes a detective who understands victimology, the layers to these cases, and not everyone wants to do that. It's hard to get people to work the sex table. Some don't want to deal with people, they just want the property crimes.

Training should cover understanding victimology and interrogations.

DNA, where you file cases. It's different if you have a suspect that's a child, then it's [one location]; if adult, here, if certain misdemeanor it's faxed downtown. Others are walked across the courtyard. We need training in the minimum steps to take in doing a follow up investigation. For example, often victims on the day of the rape they are quick to report. Two days later when we try to get with them, they've had all weekend to think so they're not answering their phone, and they don't answer the doorbell. When is enough, enough in terms of trying to contact them? We try to call them three times, go out, and send contact card. Citywide it may be different; one call may be different. When is enough so we don't get in hot water for failing to do enough?

Either you can or can't arrest. Most of the time it is the patrol officers who make this decision in terms of first responders. In terms of detectives, I think every sex detective should go to a class the first few weeks on the assignment so they know what they will be seeing. I consider myself relaxed and don't take work home, but part of the reason I left was interviewing victims, etc. It started getting worse and worse so I had to move. Officers need to know what they will be dealing with from the beginning. What got worse was that it was hard to interview the little girls. I have five kids. When dealing with victims that are same age as your daughter, and start listening to these parents that put their trust in certain people, people they have known for years and see that trust broken, it makes you realize/rethink everything. It is easier for some detectives that don't have kids.

[We need] training in investigating sex crimes and having a strong foundation in terms of what's needed when going to crime scenes. And on the laws that are changing.

I worked seventeen years of patrol. We do not have any training for report writing. There is not enough training on report writing. The report writing and interviewing skills are not there.

Interviewing is an emotional drain. It is tough to do a lot of serious case interviews in one week. I had to buy my own tape recorder. It would be helpful to have critiques. To have a professional tell you how you are doing.

The above detective was not alone in stating a need to purchase a tape recorder. In addition to training, detectives emphasized the need for resources such as polygraph machines and faster processing of DNA evidence:

Now it takes three weeks to get a polygraph, whereas doing it immediately lessens the likelihood they'll [suspects] change their mind. You really only get once chance and you want to catch them off guard because once they're on to you they're going to tell you no.

We have the sexual assault exam to tell injuries, but those don't necessarily tell that a rape happened. Polys would be great if they were immediately available. Resources are inconsistent citywide. We have more sex assault detectives. In manpower we have more here. Normal stuff, like tape recorders. We all don't have the same stuff.

The DNA process needs to be a lot faster. We need to be able to get a quicker response upon sending something to the lab. When we have to wait two to six months for results to verify a suspect that makes things a little difficult. I have a case now where victim was raped, drinking vodka Red Bull, passed out, and awoke in an abandoned apartment. No one saw anything, and she does not recall how she got there. The last thing she remembered was dancing on the dance floor and awaking the next day. We are still awaiting the results.

We need to increase the turnaround time for some of these saliva samples we turn in as sometimes they take up to six months. We are being asked to get a confirmation sample what has already been confirmed. It is an unwritten policy from DA's office. If we get a notice that identifies John Smith as an offender in particular rape and we interview and arrest him and we feel there is enough and we go to court eventually the DA's office is going to ask for a saliva sample to confirm what is being reported to us. Often they want that up front so there is no question it is him but that delays their job a lot. When asked to do confirmation and the suspect in prison we have to do swab, search warrant, a search warrant log, and all of that paperwork. If that was eliminated it would save detectives a lot of time.

If they could speed up the process of analyzing DNA that would help us out instead of waiting about two to three months for results.

Getting evidence back quicker. That's inexcusable. The amount of time it takes to get back DNA is way too long. When we submit for examination, it takes four months just to get it assigned to a DNA expert, and another three to four months to get it analyzed. That's eight months once you submit before getting anything back, if you're lucky.

Getting the results of DNA testing faster would be helpful. We test for DNA, but it is not a factor [in case processing] because it takes a year and a half to get results. They argue with us about what needs to be tested. They [DNA people] want to test unfounded and old cases instead of current cases where we need them [the results of DNA testing]. Murder is the first priority [in DNA analysis] but you would think rape would be second.

The speed with which we get DNA is an absolute must. We're getting it six or seven months, sometimes one year later. They have their reasons. But I think DNA results would be the perfect scenario to solving crimes.

Detectives' final emphasis focused on aspects of the LAPD bureaucracy that they felt would improve the quality of sexual assault investigations and increase the number of successful prosecutions:

I believe in centralization as the only proper way to handle sex investigations. Otherwise you constantly have detectives taken away to support other investigations. It is the only way to achieve effective mentorship and it promotes a tremendous resource of unit knowledge. It is amazing how much you learn when you read a report assigned to one detective and someone else says 'Hey I had something like that last month,' and all of a sudden you're putting a case together...[But] if you're going to centralize you need a squad room location that is not a below a garage that is dripping with water. There is room at Valley Bureau headquarters now because Valley Traffic [moved]. But Captains in a Division do not want to lose their resources; it undermines their castle. Egos get involved. Also, each detective needs one phone and computer and enough cars to go in the field. If you can't provide that there is no sense centralizing. And you need a D-III or a Lieutenant who is in charge.

We need to access more resources: supplies, vehicles, evidence recovery kits, access to analysts, prioritizing analysis of rape kits, entering DNA into CODIS. City Attorneys take a long time to make filing decisions regarding misdemeanors. Every investigator should have a camera and digital recorders. Everyone on my table wants to be there so they bought their own. But it raises problems with discovery when LAPD employees use their own phone for pictures. When making a policy like that, Major Assault Crimes, Sex, Burglary, should each have a camera on their desk. It would be nice if each Division is hooked up to sound and camera. Older stations do not have that.

Sexual assault needs to be more of a priority. Working homicide in this department is major status. But sex cases, nobody cares. At Divisions there are tables, Auto, Theft, etc. D-IIIs. There are Divisions where there isn't a head D-III. More value is put on auto cases than victims in sex cases. There needs to be a supervisor that cares. There is one Division in particular where they hate all of the detectives.

There has to be a way to streamline all of the forms, especially if it gets kicked down to the City Attorney's office. We send it to them when it could easily be emailed and they could just print out whatever they need from there. That would give us time to go work on other cases rather than sitting at our desk for two to three hours getting paperwork completed. If we're tied up here at the desk how can we arrest the child molester or rape suspect. There has to be a better way. We need more cars, and we lack supplies. We don't have vehicles needed to go out in the field. We have four sex detectives with only one car. I should be able to grab a car. Some tables have two. I remember ten years ago we would have like four cars, almost one per detective. We can't even go to the DA's office to file a case.

For me they take time. I don't know if I'm just slow, but other than that just having more people to investigate them. At some point I think there needs to be some kind of guidelines/filtering system. Like my unlawful sex cases, if we know they aren't going to get filed they could be a blog entry or managed separately so they do not take our investigative time. If they are living together, came together, have a baby, all met, at some point in time in recognition of immigrants coming, a decision will have to be made. And it takes time to work with those reports. If you cut down my thirty percent of cases like that then I can focus on those other reports. Maybe just having someone else, maybe the juvenile table take those types of cases and following up on them. No matter how you clear them, they take a lot of time to do.

I've been a part of two centralized units. The philosophy is good but it has to be done right. It needs to start with a few core detectives who are experienced and take in a few more and let it grow over time. The last one was a disaster because they threw everyone in with no resources so it was doomed to fail. It must be a multidisciplinary approach with the DA, CA, counseling, and SART nurses, so the victim doesn't have to go through so many interviews. It should be centralized, but not the way this department has done it.

We need additional personnel. Here if you express a lack of interest in working sex crimes you're not going to be working it. I understand the mentality of our supervisors; you're seeing and hearing the most horrible things. There is a lack of interest in working these cases. The biggest issue people have who don't want to work this unit is the child victims, and they have children. And it's hard not to want to beat the life out of someone who has assaulted a child. You have to look at the end result. These people go to prison for long sentences and that's where you get your satisfaction.

Centralizing sex city wide is needed but someone has to monitor the quality and standards of all Bureaus to ensure they meet the criteria of what is done. The Detective Bureau Chief should oversee it. We cannot have the same players come in and run it like

a district where they think it is their empire and they are not accountable to the Chief of Police. And there should be one standard as far as sexual assault investigations regardless of where you are in the department. You should get a standard level of service across the city.

The same attention and resources should be afforded to all of the Divisions and that doesn't happen realistically. You can't control who comes in, but there should be equality of resources. South Bureau was centralized in 2003. We could recognize patterns better; filing and clearance rates were better. We had more personnel for search warrant. If we wanted to run 290 sweeps on sex registrants we didn't have to rely on asking another table. It is such a benefit for our victims. Everyone worked all of the Divisions.

## **CONCLUSION: INTERVIEWS WITH LAPD SEXUAL ASSAULT DETECTIVES**

Considered together, detectives provided an immense amount of insight into how they investigate and close (clear) sexual assault cases. The findings from this study indicate that, perhaps more than any other crime given the emotional and investigative difficulties specific to these cases, detectives (and detective supervisors) have to *want* to work sexual assault otherwise they will do a disservice to the department's image, to the junior detectives who look to them for guidance, and to sexual assault victims in the City of Los Angeles. Recall the detective cited earlier who noted the department's attention to detail in these cases has been pretty low, and supported this by referencing a detective supervisor who just went to MAC school after being on a sex table for many years. Likewise, while conducting interviews we happened upon a newly assigned Detective III who respectfully declined to be interviewed, stating that s/he had never worked a sex case before and was just transferred from Autos. This is problematic for a few reasons. First, interviewees repeatedly emphasized that the single biggest challenge to working sex crimes is that the overwhelming majority of suspects and victims have *some kind* of prior relationship, ranging from a new acquaintance at a party to a parent or spouse, whereas in property crimes the human element of victimization is not present, in homicide the victim is

dead, and in most (of course there are always exceptions) burglaries or robberies the suspects and victims are strangers.

Nonstranger suspect/victim relationships in sexual assaults create issues specific to delayed reporting because there is seldom the presence of a “smoking gun,” so to speak, in terms of physical evidence. This is best illustrated by a detective who stated “Define evidence. Dripping semen? You’re seldom going to get that.” Another, cited earlier, made a powerful point: “You’re not going to find evidence if you don’t look for it.” In other words, to work sex crimes, a detective—it goes without saying that this is especially so for detective supervisors—must not only be patient, empathic, nonjudgmental, have an open mind, and want the assignment, but s/he also must be trained in the relevant California penal codes, traumatic interviewing with victims, using a polygraph, suspect interrogation, and up-to-date evidence collection relative to technology. Otherwise, victims, after making the difficult decision to report, are at an increased risk of being re-victimized by the portion of police officers and detectives who are either untrained, or, regardless of training, choose to believe outdated myths about sexual assault and do some combination of under-investigation, inappropriate classification of incidents as non-crime reports, or clearing cases exceptionally that in reality are not solved and should remain open.

Turning to the issue of case clearances, statements regarding the decision to arrest indicate that: (1) all will arrest (where possible) in stranger cases; (2) some arrest based on the presence of probable cause regardless of whether the victim and suspect are acquainted; and (3) some—either due to personal biases/preferences or those of their supervisor’s—will *never* arrest in nonstranger cases, preferring instead to present the case to the district attorney’s office for a filing decision. When the district attorney declines to file charges based on insufficient evidence,

the detective will then inappropriately clear the case exceptionally. This is wrong on multiple fronts relating to probable cause, and—most importantly—a lack of justice for sexual assault victims assaulted by nonstrangers. First, UCR guidelines indicate that law enforcement cannot clear a case exceptionally if probable cause does *not* exist to arrest the suspect. Second, if probable cause exists and there is sufficient evidence to justify an arrest, the suspect should be arrested and the case cleared by arrest. In addition to affirming that sexual assault—regardless of the victim’s relationship to the suspect—is a serious crime that will be prosecuted, it allows the police to get a DNA swab from the suspect, and it provides for a suspect forensic medical exam without a warrant on the basis of exigent circumstances. A SART nurse with over fifteen years of experience observed that suspects who are in custody getting a forensic medical exam often make admonitions<sup>80</sup> given the length of time that they are sitting with the officers and nurses, and the overall context of being unsettled (K. Williams, Personal Communication, 2010). This is consistent with the assertions of detectives who noted that suspects are more likely to talk when they feel uncomfortable and out of control, which is less likely to occur if a detective telephones the suspect out of convenience (rather than in service of bypassing Miranda) or stops by a home or residence to inquire about the allegations and upon hearing the word “consensual”<sup>81</sup> takes the case to the DA for a reject.<sup>82</sup> Finally, a detective needs to feel confident—based on training, a thorough investigation, and appropriate supervision—in the decision that if the available evidence indicates the report is false or baseless, it will be unfounded and it is being closed

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<sup>80</sup> Similarly, exculpatory evidence can also emerge in this context. It works both ways.

<sup>81</sup> For example, the following is an emblematic description given by detectives about the pre-arrest charge evaluation process with the DA’s office: “The victim and suspect get interviewed. Once we have their statements we submit [the case file] with the suspect’s statement. [The suspect is] not necessarily arrested. If he admits to something, that’s different, but the majority they deny it or say it’s consensual. We get their side of the story and we submit it.” The findings from this study illustrate that, depending on the detective, this is a way to inappropriately dispose of he said/she said cases.

<sup>82</sup> Findings from our quantitative analysis revealed that of the 40 percent of IC’d cases involving nonstrangers in 2008, 24.1 percent of suspects and 73.7 percent of witnesses (in cases with witnesses) were interviewed.



appropriately without feeling a need to seek a DA reject and inappropriately clear the case exceptionally. LAPD leadership can play a powerful role in facilitating change by retraining detectives on UCR clearance guidelines and setting high standards for training and promotion to work sexual assault cases. This would demonstrate that, like homicide, these investigations are serious, complex, and not just anyone can do them. These issues and their policy implications are considered further in Section XI.

## SECTION VII

### INTERVIEWS WITH DETECTIVES FROM THE LOS ANGELES COUNTY

#### SHERIFF'S DEPARTMENT

A case involving immediate disclosure when obtaining evidence is more likely to be prosecuted. A lot of times our cases are the victim's word against the suspect's word, and in the eyes of the DA and the courts your likelihood of getting criminal charges filed is almost zero. I think Special Victims Bureau has the best detectives in the Sheriff's department because we get a lot of confessions. A lot of us have learned to become good interviewers because we get a lot of cases with late disclosure and many cases that are he said/she said. We have, over time, realized that you need to get the suspect's confession. By handling a lot of those cases it increases our expertise. I saw that quickly when I got here and I was taught that with your suspect interview there are certain ways to do it and you have to be a good communicator.

--LASD Detective

### INTRODUCTION

It is important to note the macro level bureaucratic distinctions that shape LASD and LAPD detectives' workflow because the organization of detective work is different within the Los Angeles County Sheriff's Department and the Los Angeles Police Department. For instance, when a sexual assault is reported to the LAPD it is investigated at the station<sup>83</sup> level by one of the detectives assigned to the "sex table." The two variations to this standard are: (1) when a sexual assault occurs within one of the five jurisdictions that comprise West Bureau, and (2) Robbery-Homicide Division (RHD). Of LAPD's four Bureaus, Operations West Bureau is the only one to retain a centralized response to sex crimes from an earlier Department-wide transition to centralization. Consequently, sexual assault detectives who would otherwise be distributed throughout each of the five stations within West Bureau are all housed together and

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<sup>83</sup> The LAPD uses the term *Division* or *Area*, but for reader clarity we use the term *station* in reference to both LAPD and LASD.

work cases from the Bureau's headquarters. The second variation is when Robbery-Homicide Division assumes investigative responsibility of a sexual assault from station detectives, which tends to occur in serial stranger rape cases and in cases with "high profile" suspects or victims.

Turning to the LASD's approach to coordinating sexual assault cases, it is organized by the age of the victim. Special Victims Bureau assumes investigative responsibility of all sexual assaults involving victims age eighteen and younger, and cases involving victims over eighteen are handled by station detectives. The major difference between LASD and LAPD station detectives, however, is that—with the exception of homicide as those investigations are centralized at the Sheriff's department—LASD detectives investigate whatever type of case appears before them, from auto theft to sexual assault. Conversely, LAPD stations have designated "tables" specific to homicide, sexual assault, burglary, auto theft, and so on, and detectives work only those types of cases that are specific to their table.

This section describes the findings from our LASD detective interviews (N = 24). We begin with an overview of the participants, followed by respondents' descriptions of the issues particular to working with sexual assault victims such as rapport building and ascertaining credibility, along with their decision-making processes regarding when to make an arrest, to clear a case exceptionally, to unfound, or to keep a case open. The final portion examines detectives' perceptions of how to increase the number of successful prosecutions of sexual assault in the criminal justice system.

## LASD PARTICIPANTS' BACKGROUND & TRAINING

Our interviewees' tenure at the LASD ranged from 5 to 29 years, and length of time investigating sex crimes ranged from 1 to 18 years. With three<sup>84</sup> exceptions, respondents reported having undergone some form of sexual assault-specific training, ranging from the eight hours that sexual assault is covered in the LASD Academy to LASD's detective school. The most comprehensive training experiences they described were the LASD's forty-hour sexual assault investigations course, and, to a lesser extent, a one-week FBI course. When we asked LASD detectives whether specialized training should be required to work sexual assault cases there was consensus that it is necessary given the complexity of the investigations:

I think so, especially if a designee is set to work with specialized cases. Training should be especially geared toward sexual assault victims. Things are always changing in terms of forms to fill out and getting evidence processed, and getting training amongst peers about investigating these types of cases you're able to bounce ideas off each other and share info because within the department there are so many resources and we forget to use them.

Absolutely because it is very set, specific type crime and you must have training on what questions to ask, what's needed for the DA's office for filing and prosecution, and sensitivity training for [dealing with] the victim because obviously we have to handle sex crimes differently than you do robberies or burglaries. There are specific elements and points that we have to ensure we understand.

Absolutely, so you know what to look for with victims. Without that training you may not recognize something as being an injury of a sexual assault. I've attended other classes given by nurses. I just went to one put on by [a local rape treatment center].

There should be, yes; not only from a victim handling standpoint. I think there is a certain way those crimes should be investigated and handled, and the witnesses, etc. There is a special tweak to a sexual assault investigation that if you're not taught you have to learn along the way. And that is how I approach every day.

I think so because it's a more personalized and individual violation than your home. Obviously it is violating if one's home is terrorized but there are different issues when their person is violated.

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<sup>84</sup> N = 23 for this question.

I think that while being assigned here you should receive specialized training because the crimes are unique and specialized. You're dealing with kids; it's not like an adult. You have to be more sensitive to the issues you are dealing with.

Yes, not only specialized training but specialized units are needed to work in sex crimes. Sex crimes are as unique—if not more unique—than any other investigation unit, including homicide. Law enforcement treats sexual assault of an adult or child as a second-class crime. They do not put the training and resources into these crimes. Child abuse over the years has got specialized. [Adult] sex crimes falls way behind in terms of having the specialized unit. You need the training because of all of the changes with DNA and cybercommunication that all has to be understood and learned, but mainly it's the dynamics of victimization. With homicide your victim isn't going to be interviewed; their trauma is over. In most property crimes the trauma is there; your car was stolen, but nothing can compare to sexual assault. But we don't get enough training in trauma, and dealing with the trauma of victims, interviewing victims, and when to interview them. It is a very unique crime that victims don't get over, and they definitely don't get over it as long as the perpetrator is rolling around. The reason these crimes don't get the attention is because they're ugly and they're crimes that no one wants to face. It's glamorous to be a homicide or narco[tics] detective, but sexual assault and child molestation can happen to anyone. You can avoid homicide by staying away from a bad neighborhood, [by having an] alarm system to prevent burglary, but there aren't ways to protect your children and family. We are all vulnerable—especially women—and you can see it in cops' faces. They don't like it. They don't like dealing with it. It's too invasive in their space and they would rather push it aside and let others deal with it and it goes all the way to the top. You don't hear about it in the media other than the victim being torn apart and the perpetrator is not focused on.

These are very complex cases and there are a lot of nuances that you must be aware of as an investigator. There are evidentiary law considerations that can allow you to prove a case that otherwise might not be fileable. We can include evidence under 1108; diaries, prior disclosures of abuse even if not to law enforcement; and we can get old victims, whether their cases resulted in a conviction or not. You also need to understand accommodation syndrome; why when disclosing they only do so partially. Even with an adult victim, she may disclose a rape but not sodomy or oral cop out of being ashamed or embarrassed.

Cultural issues. Often with Asian cultures in home invasion they will sexually assault the youngest girl and we know they won't report it. When you go to the DA the DA says why did she delay the report. If they're not a VIP DA you need to educate DAs in these cases. Interrogation training alone is another need. Trying to get some man—because 99.9 percent of our suspects are men—to confess to something that no one should be doing, you need specialized training and mentoring. We all have interrogations we would like to do over again. For any law enforcement job, in particular this job, training is required.

As an investigator, yes. As an officer working the field we get basic training and field officer training and on the job training. It is important to know what you can and cannot do and what resources are available for you and the victim.

Absolutely, definitely, for all law enforcement. And for those already in the unit, definitely, because they need to know and we all need to be on the same playing field and know what we are talking about. I get so many cases where law enforcement has messed up and I do a lot of unnecessary work that should have been done in the field. Patrol officers don't know what resources are available and don't know when to Mirandize, when to arrest, and when they shouldn't. Not only those in the field, but supervisors are giving them bad information. Information is there and they are not educating themselves. I think it is generational. It will continue until it comes back to bite them.

In summary, LASD detectives stated unanimously that sexual assault in all of its forms requires a specialized response given the complexities of this form of victimization and because the dynamics of working with sexual assault victims differ from what detectives working other types of cases experience. They also stated that patrol officers and any other first responders must be trained in this arena as well as detectives because professionalism and depth in victim interactions and report writing can make or break what are already difficult cases.

## **WORKING WITH SEXUAL ASSAULT VICTIMS**

This section examines the dynamics of working with sexual assault victims; specifically, how LASD detectives build rapport with victims and the basis upon which they ascertain victim credibility. Similar to the LAPD interviewees, LASD detectives stated the importance of when the crime was reported and the victim's consistency in describing what happened as critical factors that establish a victim's credibility. Another parallel between both law enforcement agencies is that interviewees varied in the extent to which they emphasized that the role of first responders such as patrol officers—and detectives when a crime is not reported immediately—is to work effectively with victims to gather information and document all statements thoroughly

and professionally. To provide context to the following responses, findings from our quantitative analyses of LASD case files from 2008 indicate that 20.5 percent of female victims<sup>85</sup> of attempted or completed rape reported the crime within one hour; thus, delayed reporting is more of a norm than anomalous in these types of cases. Additionally, 72.5 percent of victims were cooperative during the investigation, 11.8 percent of victims gave inconsistent statements to the LASD, and 9.1 percent of victims did not want the suspect arrested. In other words, the majority of sexual assault victims: provided consistent statements to law enforcement (5 percent of victims recanted their allegations), wanted the suspect prosecuted, and cooperated with the investigation. Finally, only 1.7 percent (N = 4) of victims were sexworkers and 3.2 percent of victims had a prior criminal record.<sup>86</sup>

### **Establishing Rapport.**

You get the vibe from them. If they come in and seem really broken down and distressed then your approach is going to be different. You will try to find a common ground but sometimes you can't find a common ground with people. I find out what their previous dealings with law enforcement have been, good or bad, and reassure them we're here to get to the bottom of this. They're not the bad person here, in cases where it's a righteous one. And then you get victims who come in and say 'I'm not afraid. Let's do this and go find them.' You have to gear yourself based on how the victim acts.

When I call and set up an appointment I try to make it at an environment in which they feel comfortable. I give them that option. When they come to the station I introduce myself and give them a bit of background on me, not just professionally, but personal. I ask them questions unrelated to the crime itself. I try to build that rapport before addressing the negative reasons why I'm there. I try to find out what we have in common and discuss things like that and once they start feeling comfortable then I begin with the professional aspect of my job and why I'm asking what I'm asking. I tell them we are gathering info not to make them feel bad but to get him off the street. I explain the process and what to expect and keep them updated with the investigation.

I just try and be personable, sympathetic, understanding, and treat them with respect. Genuine. I don't know that I do [have a specific strategy]. I try to be nice and understand

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<sup>85</sup> Age twelve or older.

<sup>86</sup> In terms of gang affiliation, specific to the victim it was mentioned in .7 percent (N = 3) of the 2008 LASD reports.

their feelings. Initially I don't ask the difficult questions. I try to get to know them. I try to get an overview of what occurred before getting into the down and dirty stuff. I think they appreciate that.

I try to be as friendly as I can. By nature I am a little melancholy so my voice is low. If I can, I sit lower than them. I'll go through the basics of how are you and family history and try to get some kind of pre-rapport before the heavy questions start.

I try to make them feel as comfortable as possible. We have a diverse ethnic group at [the station], a huge Asian population. They're very private and don't want to be involved with police. Anyway, it is very hard to build rapport with them but I can usually develop a rapport with them. Asians want to speak with a female, and if they speak to a male they don't give full information. If a female responds from beginning it would be better. Since our area is very diverse they won't continue when it's filed because they don't want to participate [in the prosecution].

Start with communicating, getting to know them, background info. Work your way toward getting them to open up to you; make them feel comfortable.

I think that it helps that I am a female in terms of dealing with the victims but it hurts when dealing with the suspect. With an adult who has been through a traumatic incident, you don't want to sit and beat around the bush for a long period of time. They know why they are there and I tell them that I am there to listen. It helps being a soft-spoken female. I tell them I'm not there to judge, but just need to know what happened.

It is different depending on who it is: you introduce yourself and tell her that you are sorry that this happened to her. You ask if she would feel more comfortable talking to a female detective. I only had one case where this happened. I was told after the fact by victims that they would rather talk to a male detective because they think that other women will judge them and their behavior. I begin by just talking with them about their family, about what they do, and then go from there. I don't just jump into questions about the incident.

I like to have them come in and just talk to them for a while to get a feel for other things that they have been through. I walk them through what my plan is and what I intend to do with the case. I tell them that they can call me anytime and that I won't judge them.

I personally try to make them feel comfortable. I say that I am sorry that I am going to have to talk to you about something that is really painful and don't be embarrassed. I reassure them that it is okay to be graphic about the language and the descriptions and nothing that you will say will shock me. I have heard it all before.

I am soft-spoken and never wear a uniform and always cover up my weapon. If the interview is at school, I start talking about what they are studying at school and what they like to do in their spare time. I have two kids and I think that I can relate to young



victims. Sometimes I have to go back for a second attempt because the victim won't talk to me initially, but that does not happen very often.

I start by talking about their background, where they came from, their family situation, and likes and dislikes. Only after that will I go into the interview about the incident.

I call them right away and introduce myself on the phone. I always do a one-on-one in person interview in which we talk first about her background before we go into the case. Some victims bring family members or friends and some come alone.

It depends on my first initial reaction to the victim. If she is shy or upset, you have to approach them cautiously. Try to get to know them before you start talking about the crime.

Most victims that I have dealt with want the police to help them and are cooperative. They start to get frustrated when things are not happening as fast as they think they should. They don't understand that I have a caseload. Try to talk to people in the way that you want to be treated. I usually can calm people down but because of the TV shows that are out there, they think that we get DNA results in twenty minutes. They think that we have labs in the station and that there are cute little lab assistants who are working on your results as soon as they are provided.

It's all different. I have children of my own, and I relate to them that I've got kids and have seen everything. It depends on the age of child: from thirteen to fifteen they're belligerent towards authority. I'm going to look like a cop no matter what. I try not to be too formal with young people. Aside from that I try to get into their head about what's important to them and gain some kind of an understanding of where they're coming from.

I don't think that I look like a detective so it is easy for me to establish rapport with them. I try to explain the process step-by-step and will call them and let them know how the investigation is going.

It depends on age; a seventeen-year-old is different than a five-year-old. I come to their level and sit at their level. I talk to them about things I think interest or will relate to them. I introduce myself as a police officer and establish a first-name basis. I tell them about my personal life and my kids as it relates to them. I try to spend a good amount of time building a rapport with them.

By being myself. With children it is a little different because you have to break the adult barrier. With an adult or older victim the key is sincerity. They have to know you understand what they're going through and even though I was never raped I have to relay that I understand the dynamics and the trauma. Even though I might be obviously checking their credibility they believe from the get-go that I am going to believe what they say and will take them at face value until proven otherwise. I have interviewed a victim who was called a 'fucking liar' [by other LASD personnel] who was kidnapped and raped by gang members. I had to overcome this with her at an interview facility. While I interviewed her I didn't get up. I sat below her, and I told her I take this very

seriously and I am passionate about prosecuting these crimes. If you don't do that and they think you're looking at them jaded, they will be hesitant to give you information they might be nervous about. They have to know they have your complete trust. In order to convey that you have to understand the dynamics of sexual assault.

Take time to speak with them. Ask them about anything to be able to build commonality. I tell them about myself. I always use my first name. I am available to them even after the case is done. I give them my cell phone and email address. They pick up on it and they know your concern. Emergency response workers are the worst given time constraints and patrol officers are trained to take notes in a way that doesn't work with sexual assault victims.

I try to put them in an environment that is more comfortable and explain the situation. Often I tell them I'm not going to hide anything and will be truthful despite the outcome of the case.

Lots of conversations. I'll call a victim over a dozen times for little things. I'll let them know I'm dedicated. I give them my cell phone number. I always return phone calls. I will answer my phone on the weekends. Some detectives say 'You're crazy, they will call you.' I'm very firm with them. I'm considerate but firm. I've only had a few leaving repeated voicemails.

Considered together, detectives emphasized the importance of creating an environment in which victims feel safe and comfortable to disclose the details of their experience. Their comments indicate that the manner in which patrol deputies or detectives interact with sexual assault victims who are either untrained or do not want to work sex crimes cases is detrimental to the rapport building process with law enforcement. This is particularly important because interaction with law enforcement constitutes victims' first experience with the criminal justice system; if inappropriately handled, this increases the likelihood that the case will not move forward in the system. The next section reports detectives' statements about how they evaluate a victim as credible, along with their strategies for dealing with uncooperative victims.

## **Ascertaining Victim Credibility.**

LASD detectives' evaluations of victim credibility<sup>87</sup> were similar to LAPD detectives in that their approach to victims was either "guilty until proven innocent" or "innocent until proven guilty." As evidenced in the below statements, many stated the importance of interview skills, which affirms the importance for law enforcement personnel who work sex crimes to have specialized training given that victim credibility is ascertained on this basis and gathering sufficiently detailed information is predicated upon a solid rapport with the victim:

By interviewing. You get a lot of information by talking to them, and not necessarily about the crime itself but their history, growing up, and what they've been involved in. And by the questions we ask about drug usage, whether they have been diagnosed schizophrenic or bipolar, etc. That will play a big part of it. It is gathering information to forward to the district attorney's office.

How they come across in speaking about the incident: their mannerisms, anxiety levels, and past history. Sometimes they don't have good backgrounds and have been molested and assaulted their whole lives. A lot of it is meeting and speaking with them and building a rapport and you get a feel for it. You hope first of all that they are telling you the truth and you try to get as much detailed information as possible from the victim.

Based on the way that they describe the incident that happened. From my interviews I find that kids from ages six through twelve usually have no reason to lie about something that happened, unless there is a custody issue. I look at their body language and whether the story is consistent.

Just based on their statements, background, and priors. Criminal history; if they have false police reports in their history. Statements. It's really hard when they've consumed drugs and alcohol and they don't know what's happened and there's not a lot of evidence. It is so hard to investigate. I'm sure in a lot of those instances they were victims but it's so hard to investigate them given their lack of ability to recall.

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<sup>87</sup> One detective responded to this question with a case example: "The victim went to a restaurant and met up with this guy, someone she knew from before. She went into the car willingly and witnesses said that she and he were kissing and hugging and that the victim did not cry out for help or tell him to stop. The guy's friend and owner of the car comes back and gets into an argument with the guy. He hits the owner of the car and the owner of the car then hits the girl and she ends up with a black eye. When she gets home her family asks her about the black eye and she says that she was abducted and raped."

That is a very very hard thing to do. I look at her demeanor, her criminal record for prostitution arrests, physical evidence, and promptness of the report. Is she willing to cooperate? Is the story consistent? If she gets defensive when you ask questions and are trying to understand how the crime occurred.

Consistent with the “guilty until proven innocent” approach, the following detectives referred to the victim’s consistency in re-telling the story after the initial report to patrol, the victim’s demeanor, whether the victim has a criminal record, and if the victim has reported a rape before without demonstrating an understanding of the consequences of sexual assault-related trauma and its impact on victims’ ability to recall information:

Based off what they say in the first report, what they say in the interview, and how everything matches up. Also, I always say the DA will say they have extensive histories of prostitution. But we just arrested a man for raping and murdering prostitutes, so they can’t be victims? But you do have to weigh in their criminal history because in the courtroom that will be brought up in terms of their credibility. What happened back then? Have they reported a rape before? What happened then? What types of crimes have they been convicted of? Some weigh more heavily than others. If a victim is inconsistent or if a victim is withholding information and doesn’t want to give you names of people who can place her at a location at a certain time frame, those things are signals. I’d say that two of every ten victims have reported prior rapes.

Whether they have made numerous complaints of rape; their criminal history. I have a lady in my area who has made two or three allegations of rape against different men. She does take medication for mental issues, so it does play a big part in terms of whether she will make what we call a ‘good’ victim on the stand in terms of whether she will be able to testify and remember what occurred. It’s not necessarily just mental issues but dementia and age. I had a seventy-five-year-old victim, a wonderful lady. We got her right in the hospital right after it happened. She hadn’t had sex in ten years. There was great evidence. She was cooperative and she had all her wits—no meds. He ended up pleading at prelim. When he saw her at court he took a deal for twenty-five to life.

I may have my opinion that she is not telling the truth; however, their burden is low. I will take what you tell me. I don’t get to be the devil’s advocate and say you’re lying. I may try to go around and see if I can catch them in a misstatement but it’s pretty hairy on calling a victim that’s claiming to be raped a liar. In all my years in law enforcement 98 percent of victims have said at least a little lie.

I always look into the victim before I contact her to see her criminal history. I like to interview the victim in person rather than over the phone because I think that body language is important. I test her without her knowing it. The SART report may indicate that the victim was drinking or using drugs. She may be willing to disclose that to the

SART nurse but not to us because they think that we will judge them. I insist that she tell me the truth and make sure that she knows that I don't care what she did or whether she was drinking or using drugs. If they come out and admit all of this it enhances her credibility versus the ones who hide everything and don't want to admit to being drunk.

You never really know but there are things I take into consideration such as how long it took them to report and if they did not report immediately, why not. If I catch her in lies that affects her credibility with me. Sometimes her criminal history comes into play. How would she be on the stand if she has a twenty page long rap sheet? Is she willing to come in and cooperate with me and if she is willing to assist me with the investigation by getting medical records or fresh complaint witnesses. Sometimes it is during the initial interview where they trip themselves up so you go back to get more details and things start changing.

I try to build a relationship with the victim when we first meet. I get a feel for her emotional state: does she have an underlying agenda or a reason to make this up like being mad at a boyfriend? I have a case now involving a woman who got a breast augmentation and did not want to pay the bill so she claimed that the doctor sexually assaulted her. We spoke to the nurses in an attempt to corroborate her statements and the nurses were not able to confirm. We spoke to the doctor and he said that she was unhappy with results and made complaints that were not justified.

Through interviews and also I may have someone else talk to her. You get a feel for her demeanor. I have a case right now where a girl is accusing four boys of having sex with her. But a lot went on before that: watching pornography, touching, and grabbing. Her demeanor is odd. She is smiling and does not seem too concerned about the case. I asked her to come to court in business attire but then she comes in looking like a hoochie mama. The comment the DA made in this case was that there were multiple suspects involved and the types of acts that were alleged. One of the four was released but the others are scheduled to go to trial. They have been in custody for eight months.

I think that as an investigator it is always a good idea to check a victim's background to see if there are previous allegations like this. But I handle each one as if it is the truth and I am going to do a full investigation. Even if the victim does have a questionable criminal history we would still present the case and let the DA decide whether or not to pursue it.

I take the victim's story and then review the case. I will try to clarify any conflicting stories. If the victim is telling me what is happening I have no choice but to present the case to the DA's office as long as the elements have been filled and the victim insists it has occurred. I will not sit and call a victim a liar, nor will I ever. A very small percentage of victims will admit to lying. The victim hasn't lied in less than 5 percent of my cases. The case will move forward if the victim insists it happens. The victim makes or breaks a case.

Sometimes it is during the initial interview where they trip themselves up. You go back to get more details and things start changing. The school or parents might have a history of the child lying and you can build on this.

The truth is logical and the truth does not change. If there is not a logical and consistent explanation then that is a red flag. If the victim's words don't match the victim's emotions; example: if they are making allegations of sexual acts that occurred but their words don't match the way they are speaking, or they appear to be taking it lightly or not taking it seriously. But sometimes kids will giggle or laugh and you might think why is she laughing, but it is just a coping mechanism. You have to understand how kids and young teens react. They may not react in the way that adults think they should and that does not necessarily mean that it is a false statement. There are cases in which the injuries don't match with what the victim said happened. She'll say I was tied up or handcuffed but there is no evidence of that. She'll say 'He beat me up,' but she does not look beaten up.

If conflicting statements do not match then I question her credibility.

Consistency with their initial statement with patrol. Often I'll go to clarify things with them and, it's rare when they do, but I look for if they're changing their story. You tend to believe. I give all of the victims the benefit of the doubt. But you can tell by emotional state when interviewing them and the detail they use to describe what they went through.

Other detectives, consistent with the "innocent until proven guilty" approach, demonstrated an understanding of the role of trauma in sexual assault and emphasized that they begin by believing a victim until evidence proves otherwise during the investigation.

I never really know for 100 percent sure whether she is telling the truth or not. I gage it based on her testimony, the way that she describes certain things, certain smells, and her emotional state, to a point, as she is telling the story. Basically, it comes down to a feeling. If you work law enforcement long enough you develop a sixth sense about whether someone is telling you the truth or not. For a woman to put herself into that situation—the exam, retelling the story several times, perhaps going to court—you have to assume from the outset that she is telling the truth.

Usually the first story that the victim tells is the truth. We contact the first person that they contacted. Most will call someone before they call the police. We use different interviewing techniques and see if the story stays the same. I don't think that someone is lying if they remember something several days later. But where things get a little cloudy is around the issue of consent, especially if the victim and the suspect had consensual sex before. I take people at face value until the story completely changes or just does not make sense.

I believe everyone until I have a reason not to. I understand there are reasons why people say things and report things and I think a large majority of all cases something has happened and it's just a matter of figuring out what happened and looking at the evidence.

There are so many things I look at. I grew up in East LA, so I don't evaluate on income level. I was very young looking for many years and people treated me disrespectfully so I don't judge based on appearances. I will chat a lot with suspects and victims to make them comfortable, and I listen to them. You have to ask the question several different ways so they don't realize you're asking them that way. It has to add up. School involvement, or a bad history; I don't look at them as liars then, I see that as something that is troubling them. I talk to other family members to understand what that person is all about. I talk to them not just during the interview but I'll call several times and build a relationship and by talking with them about random things you can get a sense of the way they are about other things; if they're docile, revengeful, or a rebel.

In my experience rarely do children fabricate sexual abuse allegations. A lot of times a person who doesn't deal with sex crimes might make a judgment against rape victims because they're a prostitute or a liar, but often sexual predators seek out imperfect victims and that's what I've seen happen, as opposed to a victim who's in school, confident, and plays sports.

It goes back to listening, put down what you're told in good faith, and attempt to find physical or biological evidence that will either corroborate or unfound it until you have reason not to.

Face-to-face interviews are best. One-on-one is the best. You have to judge it on the totality of the interview and take everything into consideration. You can't judge it based on conflicting statements. That is normal; trauma is going to cause that. And you can't judge it based on emotion as I've had victims talk about it as a movie they saw last week. You have to throw out your preconceived notion in which you think what you would do or what she should have done. You can't go by injury as many victims are not. Delayed reporting also an issue but should be seen as normal given the crime and not a reason to be skeptical. You have to look at whether there is a motive to make this up and that is rarely the case.

You have to base it on your training and experience. If you have a child you already have a leg up on it. Once you've been around enough children and have training in child development; I've talked to hundreds of children and I know how they act. Once you know how they react in this arena and asking them questions you can see whether they become quiet and what that means. You assess how children act normally, and once you segue you can see demeanor change. It is hard to fake feelings, especially for children. I had a case that would have been a no go but I had quotes such as 'On a day when I was supposed to feel close to god I felt dirty.' Draw feelings out of a kid and get that written in a report.

We have an advantage in our unit because we deal with children. I find that children who are not being truthful or who have been coached are pretty easy to spot. The exception would be teenage girls age thirteen to sixteen. I have had cases where teenage girls have lied and made up a story—not to be malicious but to get out of trouble. They snuck out of the house and spent the weekend with a boyfriend and they will say that they were kidnapped; or they get pregnant and say they were raped.

### ***Uncooperative Victims.***

Detectives were then asked how they handle uncooperative victims. Consistent with LAPD detectives, they emphasized the majority of victims *are* cooperative, and they varied in the degree to which they asserted the onus is on the detective to create an environment that fosters victim cooperation.

I try to explain why it is important to have their cooperation. I say that I understand victims will often blame themselves but the incident happened because of the suspect and not because of anything they did. Plus there are patrol officer issues: victims will say it took too long. They just want to go home and shower and get some sleep and be alone but they had to wait for the deputy; then he's male, and then they have to wait for a female deputy and then be transported to one of our exam centers. Then we drive them to the facility and then we interview them. The biggest complaint is the time it took or they feel the deputies didn't believe them, and I think that has to do with the training. You have to handle sex crimes questioning and investigation different than you would a house being broken into.

They'll avoid you. I've had it where you call their work and they tell receptionist to say they don't work there anymore. In my experience one of every ten victims is uncooperative. But most do cooperate. I've had one on the fence, but in my experience it's been rare.

I do my best to ignore it and just focus on the case. For example, I had an in-custody case. It was two lesbians who invited a male into their relationship. The lesbian couple was angry with each other and both were flirting with the same guy. They invited him back with the understanding they were going to have a threesome and then one of the females reported being sexually assaulted by the male when her female lover went inside the apartment. I wanted to do an interview at the station where I could videotape it but she showed up one hour late. I went to the house and took photos. She wound up showing up one hour later but I was busy with another case and couldn't break away. I told her to wait. She left after ten minutes and I could never interview her. I submitted that case based on what she had said in the first interview. It was rejected.

I try to reason with them [that being uncooperative] that it will just be a longer interview. Most victims want to talk and tell their story. The only part is that being a male they



don't want to discuss every sexual act that happened. They may want to tell you A-D but E-K is off limits so I have to bring in a female.

The only hostile victim I have had has been the woman who reported the XXXX thing. I try to remain consistent and don't allow them to control the case or the interview.

[If a victim is hostile] I will see if I can get a counselor, someone from a shelter, or an advocate. If that does not help, I may have to reschedule. We do the first interview with the victim soon after we are notified.

There is not much you can do if the victim is hostile. If they shut down, if they really don't want to go forward with the case, and don't want to have anything else to do with you, you have them sign a form indicating that they do not want to go forward. Start talking about something else. Take the focus away from the rape itself and then in the conversation bring it around to the rape. Ease them into the interview. Regarding suspects, most of them will be cooperative, very respectful, and want to tell their version of the incident. I would estimate that many of the rapes are rejected. Usually the victim will go to the interview with the DA and then will disappear. They know that if they disappear the DA will not file charges.

If it is an older child, a teenager who understands more, you have to say that what happened to you is not right and then you just have to dive into the interview. You tell them why you are there and try to get them to cooperate.

Being a female, I think that they can relate to me and feel comfortable opening up. I try to explain the process and lay out the ground rules. I make it clear to them that there are always two sides to the story and explain to them the repercussions for the suspect: he may go away for a long time. If she is just doing this for spite, she needs to know that this may have a severe effect on his life.

I had one where she was committed, a 5150; she had severe migraines and attempted suicide by slitting her wrists. Once she was committed she disclosed the rape. When we talked with her she was upset about the commitment but seemed to open up as we talked about the incident. A case that I am on call for today involves a woman who is Lebanese and does not want her parents to know about the incident. It's a cultural thing where parents would disown her if they found out about it, especially since all of the suspects are black. I have had to be very careful about that.

I try to maintain a lower voice. If they need to yell I will let them, up to a certain point. But I finally need to tell them that we need to talk about this so that we can find out what happened to you. But I can't force a victim to talk to me.

I tell the victim, 'If you want me to help you, you need to let the walls down because otherwise we won't get anywhere.' We don't really get any hostile victims. There are some who are frustrated by the process, but I have to explain the reality to them.

I have to give a lot of credit to [a local rape treatment center]. The counselors there are excellent. They have it down to a science in terms of the exam and follow up care for the victims. They have a good experience there and that puts them at ease.

I take a break, offer them a food/drink/restroom break. I may try again. I had a twelve-year old victim and she was crying and upset, and I knew I couldn't continue that day. This was at her school, and I tried again the other day. It's good to give them time so you have to be patient and understanding.

The only victims who are uncooperative or hostile are those where when you start questioning the report and their statements in the interview and they perceive that you think they're lying. At that point my job is to explain to them why I'm asking these questions because someone else in the future will be asking them.

The next section transitions from detective/victim rapport to the impact of assault-related factors on victim credibility and—ultimately—case outcomes.

### **The Role of Alcohol and Drugs.**

Findings from our quantitative analysis indicate that 30.4 percent of female victims age twelve and older who reported an attempted or completed rape to the LASD in 2008 were either drinking (23.8 percent) or using drugs (6.6 percent) prior to the alleged assault. Stated another way, the majority (69.6 percent) of victims were neither drinking nor using drugs. We asked LASD detectives how victim and/or suspect use of alcohol or drugs impact the prosecution of a sexual assault. Consistent with the LAPD interviewees, detectives highlighted that substance use of any form is scrutinized much more in relation to victims than to suspects. Similarly, their responses ranged from—on the one hand—an emphasis that their presence ruins the case, to—on the other—assertions that, through investigation and attempts to collect evidence, they are not insurmountable:

Those are the cases that are killing us. They go to a party and get alcohol and weed and the next thing you know somebody had sex with them that they didn't want to and they find out about it later and they want to say it is rape. Those are difficult because you see

the girls will participate in things that are not savory such as group sex and provocative-type behavior. If we are lucky to see the video we see girls acting trampy in a *Girls Gone Wild* kind of way, and—particularly female—DAs will say the victim was a tramp and if she was using alcohol it hurts their credibility in court. It is something we have to overcome. For suspects, it is a tool for the investigator. We can say if you weren't drinking you wouldn't have done this. Intoxication is not a legal defense but it is a great tool to interrogate them. Recently we had a case where a victim had twelve shots of tequila. Her friends all characterized her as going in the room willingly, and he said she was fine with it. I was not going to arrest that guy for rape. I made him research the laws for rape with his parents. Another cop might have filed this on you but my gut said no. I think she had the twelve shots and was somewhat functional and she probably became progressively incapacitated. They're [the defense] is going to demonstrate that your victim is a slut and has sour grapes. I asked [the suspect] if he knew she had Facebook page and that it looks bad.

Definitely it is a negative factor, but not as much for the suspect because if he was sober enough to do the act he knew what he was doing. I don't know of a case that was rejected because the suspect was too drunk. Obviously there is a crime for raping an intoxicated person, so the law recognizes it but it can be detrimental especially without DNA because the victim may be incapable of giving information that can put him there at the scene. That's the biggest factor and primarily it's based on what information that we can gather. It shouldn't matter. It's just as much of a crime to rape an intoxicated person as it is a sober person but it's more challenging because she can't provide the information.

Alcohol and drugs make a big difference. It all comes down to being able to determine how drunk the victim was. We have to work through all of the junk to figure out whether the victim can handle her liquor or not. We have to weed through that and it is very frustrating, especially when you get a victim who says, 'What, I can't go out and drink anything?' It does not mean that you are giving someone permission to rape you but you do have to police yourself. It is sad to say, but the jury will not be sympathetic if the victim was drinking.

They are very significant. A lot of victims have a history of drug and alcohol abuse. Especially working in the area I work the drug use and the alcohol abuse is high. Suspects are often arrested for possession or being under the influence, and victims often have a prior history of drug and alcohol abuse. But [they are] not necessarily [inebriated] at the time of the incident.

It is so hard. I wish I could go around to high schools, colleges, and give lectures to females on the use of drugs and alcohol at parties and bars and on dates. If I had the opportunity I think it would help, especially by the station where I work you have [universities] and there are a lot of bars.

It plays a role but does it decide a case? No. If the victim is too intoxicated to give consent then that's a crime. If she's passed out and unable [to consent] that will be a whole additional charge. As far as credibility issues in general, just because she may have

been drinking and then said no in the middle of it does not mean it is not rape. As far as the outcome in court, the court will probably have an issue if they believe the suspect had alcohol problems and that led to the incident occurring or playing a part. They might order drug or alcohol treatment, but would it decide a case? No.

It doesn't affect my view of the case because people are out there doing it, period and that does not make them not victims of a crime. [In the case example just given] Despite the fact she is an alcoholic stripper we have a CODIS hit on this guy.

Often when victims are saying they were date raped they drank too much or thought they were slipped something and woke up in hotel room. Then we have to articulate they were unable to give consent and when there is no physical evidence from the SART exam it is hard to prove that a crime occurred. If there is nothing other than they woke up in a hotel it's hard to say what happened. We also find often when we go to a location the cameras or surveillance are not available so we can't tell. It helps to see if she walks out, or if she was carried or stumbling out. But with none of that, no physical evidence, no memory, and sometimes even if their clothing is disheveled, it's not enough to articulate she was assaulted. Every once in a while you'll get a case where the alleged suspect has a criminal history and he's on his third person. I have one now where he takes drug-addicted females to parties and takes advantage of them. We haven't had a case filed against him yet. The victims weren't forced to go in the room initially; they were partying with him. The DA has not filed in that case. I had one a few years ago, and my partner did a few months ago. We just now made an arrest.

The role of drugs and alcohol is difficult to say in general. You have to evaluate each case individually.

Alcohol or drugs do impact the case. If the tox report shows high levels of alcohol or drugs then we know that someone in that condition will not be able to give consent. The DA is still willing to file in these types of cases but if the case does go to trial the jury might be judgmental. But every case is different and so many factors come into play. If there is evidence of injuries and if the victim can explain it the jury—she can't even walk so how could anyone have sex with someone in that situation.

Usually there is alcohol and/or drugs involved and the suspect knows to use that as part of his defense. There is an awareness on the part of suspects. They know what to say. Usually cases like that will not get filed.

Alcohol or drugs may impact the investigation if the victim says that she cannot remember what happened because she was using drugs or alcohol. If the suspect says that he did not know what he was doing because he was drunk or using drugs or was not thinking straight that does not matter since that is not a defense to the crime. If the victim was drunk or using drugs, the DA will insist on more evidence. If the victim was so drunk that she can't consent, that is an issue for us. We get a lot of unlawful sex cases involving victims who are seventeen and who are having sex with their boyfriends. I will

still present [the case to the DA] but the DA is unlikely to charge unless there is a large age difference between the two of them.

Drugs and alcohol sometimes can create obstacles, but it just depends on how the victim comes across in front of the jury. If she can be consistent and can clearly articulate what happened, then the drinking may not cloud the issue. But if she can't remember it does have an adverse effect and damages her credibility. But these cases are not necessarily rejected by the DA.

With drugs and alcohol it is hard to prove [suspects'] intent if they say that they were under the influence. At the end of the day, just because they used drugs or alcohol it is hard for them [victims] to say no. Those are harder cases to try and present [to the DA].

In the majority of the teen cases we have it involves social gatherings where children are experimenting with drugs and alcohol. In my cases there are often young children who have left the house without parents' knowing and it involves substances. A person's ability to recount an event is impaired which becomes a stumbling block. Ecstasy and date rape drugs aren't huge. We're not seeing them. We're seeing more alcohol and marijuana. For prosecutors it convolutes the accuracy of the information you're working with, which is everything. It impeaches the ability to testify accurately.

It has never played a factor in my short experience. I have had cases where drugs and alcohol are involved but it hasn't affected how I investigate or whether charges are filed.

Alcohol and drugs aren't relevant a whole lot. Many times alcohol content will come out in test results. Again, victims may acknowledge they drank a lot and their decision-making skills were compromised. Cases have been filed despite alcohol use on the part of the victim. Alcohol and drug use of the suspect is documented. It may play a role but the DA's office will also file if they were under the influence.

I don't put too much emphasis on it. I haven't had any cases where they are still involved with drugs and alcohol. I've had people ashamed because they were drinking heavily or using drugs when it happened so it was embarrassing. I tell them that whatever you did, I don't care. I don't care if you're here illegally or if you've sold dope on the streets, we're here about the pervert that is bothering you. It plays a role in why they did what they did but not on the outcome. A lot of addictive personalities tend to be addictive in other areas and sex is one of them.

The next question focuses on LASD detectives' experiences with false rape allegations and the circumstances surrounding the people and dynamics associated with these types of reports.

## **False Reports.**

Often when done it's coming from an abusive relationship and they are worried about what their boyfriend will say to prevent getting in trouble. Or they have substance abuse problems. It's not just your average citizen that comes in and makes up a rape report. They usually all have some kind of history or problem.

Detectives were asked the factors most often involved when false rape reports are filed.

Consistent with the LAPD interviewees, LASD detectives emphasized that teen and adult females make false allegations either to cover up for their whereabouts, because of mental health issues, or for revenge:

Revenge, extortion; a woman scorned. Sometimes they do it for attention or for their own personal gain. For example, they may need to relocate, and by saying they were a victim of a heinous crime they can get new housing. It's amazing how abused the system is and how blindly we—society as a whole—look at abuses of the system and the benefits we give to victims and how it's abused, and it's just wow. And so we have righteous victims, and we have those who aren't that slip through the cracks and get benefits.

Vindictiveness; they're pissed off at the person. You don't know. By talking to them and interviewing and how they answer the questions you can tell by their body language. If it's a sex crime that just happened they are going to be visibly upset and crying. They go through the emotions like grief if there was a death in a family and are scared and upset and pissed. But if they go straight to that and demand when he's going to be arrested with no marks and no evidence you don't really know, but you still have to investigate it like you would any other case. Doing this a long time you get the feeling that you can read people and you know, but you still have to handle it like you would any other sex crime because everybody deals with their grief differently.

Selfish reasons. You don't really know. You can't treat any cases like they are unless they tell you they did. There's no way of knowing.

A multitude of reasons. Fear of getting caught. I had one victim who said three people attacked her but the only thing she was really upset about was they tore her dress and didn't pay for it. So it could be monetary. It could be flat out revenge.

I'm not sure why someone would do that.

To stay out of trouble with parents or a husband. To give them an alibi when they are not where they are supposed to be. Usually all of the cases fall into those two categories. I have not had a case that involved revenge. I had one case involving a divorce: a couple

had ten kids and lived next door to one another. They had consensual sex all the time. She says that she got locked out of her house and so she went to his and when she woke up it was clear that they had had sex. It turned out that it was an issue of custody of kids.

If they're cheating and got caught, or revenge if the other person did not want to stay in a relationship with them. Or if their own personal conduct after the fact [of consensual sex] was such that they were embarrassed and to not to look bad in the eyes of family they report it as a rape. Or a prostitute who claims that she was raped but it was a business deal gone bad. People do things without actually thinking it through and understanding what it will entail. In my experience we have not filed charges against any victims who have filed false reports.

I had one case, a spousal rape. I don't know if it occurred or not but her relationship was extremely violent. She filed a complaint for DV and the DA rejected and then she made an allegation of rape. I think that she was just trying to get out of the relationship. I had another case where the victim was trying to get money from the alleged suspect. It was a consensual relationship and he had been giving her money. When he stopped giving her money she was texting him that he needed to make it right. It seemed to me that she was looking for money because she was financially struggling. The other type of false report comes from the woman scorned who wants revenge.

It seems to me that there is not an awareness of how serious a rape case is and the law is used by the victim to get something else. People that do this don't have much to look forward to and don't understand the consequences of making a false report. They don't have a family core support system and therefore there is no concept of what is appropriate. In my area, the majority of the victims are prostitutes. Initially they will deny the prostitution, which I won't ask them about until the end of the interview and at that time they typically get very defensive. Saying rape is a way of empowering themselves because they are being abused. It is a way for them to exert power and show the suspect that they can ruin his life even though she is only a prostitute.

When they are upset at a parent because they got disciplined for something. They hear a friend disclose what had happened and want to disclose their own 'story' and then they continue with the lie after the friend discloses to someone else. Or a child may be coerced by another parent to say certain things in a divorce case.

I see a lot of remorse. They go and get drunk and wake up the next morning and think, 'Oh god, what did I just do?' They try to justify their actions by making a report to make their families believe that they were the victim when in reality they were a willing participant.

Anger at the suspect. There is some drama or some issue that happened before and the victim sees this as a means to get back at them. That is why it is important to know the context of the incident and the nature of the relationship.

Most of the ones I have seen involve teenage girls. False complaints are rare but overwhelmingly they are made by teenage girls. Or the occasional case where one parent files a complaint against the other one in a custody dispute.

A girl who says that she did not mean to have sex but got pregnant who told her parents she was one place but was actually at a party. A need for attention. They don't understand the consequences of what they are doing. They usually claim that they were assaulted by strangers.

They were out with girlfriends and hooked up with some guy and their husband found out. I had a case where the victim's boyfriend was in prison. She met someone else and hooked up with him and lied about being sexually assaulted by him. It almost started a gang war over this when her boyfriend, a member of another gang, found out about it.

Boyfriends, for girls; trying to get attention of another and do something to see if someone cares. Sometimes kids who are really disturbed and trying to socialize, something comes up in class, it gets reported, and the ball is rolling.

One of the false reports in our station involves a young lady who is mentally ill and was off her medication. I believe that she made a false report. Also, in [a station] we have a lot of celebrities and professional athletes and one of them was accused of sexual assault. That victim had a questionable history—an extensive arrest history for prostitution and other things—and during the course of the investigation she admitted that she made it up and was hoping to gain financially. I can recall two incidents that involved false reports and the victims later told the truth about the incident.

Custody of a child or something to do with an ongoing custody battle; or to cover up something they did wrong. For example, a teenage female might allege rape when she had consensual sex so she doesn't get in trouble with her parents or boyfriend.

We ask suspects this. Suspects will say because I didn't call them back, because I broke up with them, or because I said I was seeing someone else. On the victims' part, if I find the elements of the crime don't match and I explain it to them they then say they didn't realize they filed a false report. Rarely have I had a victim come forward to say that for fear of possible prosecution against them.

I had a lot in the field. When I worked the field I could tell. I would get a feel for it and get to the bottom of it. You don't have a lot of time to investigate in the field. The motivations are revenge like in ex-husbands' and wives' custody battles. There are some people who are just pure evil and I've seen a couple but most people are not that evil to file a false police report and ruin someone's life.

In summary, the LASD detectives interviewed during this study stated that revenge, accounting for time, and remorse are the main reasons that victims file a false rape report.



Findings from our analysis of 2008 case files revealed that 5.1 percent of female sexual assault victims age twelve and older who reported to the LASD recanted their allegation, which—while not conclusive evidence that an assault did not happen—speaks to the victim’s consistency. Finally, detectives’ assertions that false reports are rare are consistent with the “innocent until proven guilty” approach to sexual assault victims. The last question specific to victim/law enforcement rapport examines detectives’ perceptions of the difficulties faced by victims when reporting.

## **PERCEPTIONS OF CHALLENGES FACED BY VICTIMS WHEN REPORTING**

They have to relive and retell the incident over and over again; fear and embarrassment about what happened to them; fear that people will pass judgment on their choices. I do think that there are times when you get so used to hearing the same old song and dance and don’t see the evidence to back up their statements and so you judge them off the bat. But things are getting better. I would say that 99 percent of our deputies will take the report even if they don’t think that it happened and then allow a detective to make the decision as to whether something happened or not. An incident can be documented as ‘Suspicious Circumstances, Possible Rape.’ This is a non-criminal report but it is referred to me and when I get enough information to show that it really happened I can change the status to a crime.

The above statement demonstrates the extent to which patrol and detectives function as gatekeepers to the criminal justice process for sexual assault victims. They decide whether and what type of documentation (a crime report, a non-crime report, or nothing at all) will result from their contact with a victim, and the quality and depth of the subsequent investigation will be an important factor in the district attorney’s filing decision. LASD detectives’ perceptions of the difficulties for victims when they report the crime to law enforcement centered on victims’ feelings of shame and self blame:

The biggest challenge is shame. The example of Lebanese young lady: there is a lot of shame involved and she does not want her parents to know that she was with black guys. She is sexually promiscuous and she does like black guys but nonetheless she does not

want her parents to know because that is not acceptable in her culture. Girls who believe that they are somehow to blame feel mad at themselves because they got drunk and behaved badly.

Their biggest challenge is whether they are going to be believed that something did happen. The field deputy just gets the facts and may send a message that s/he does not believe the victim. A first encounter that is kind of negative. We know how to ask the questions and get the victim to disclose. We need better training during the academy regarding how to talk to victims of sexual abuse due to their fear of retaliation and fear of getting in trouble.

It all starts with the first deputy. Just from my days with the field, they want to get in and get the story and get out of there. That's not what you do with sex crimes. When I worked patrol I told them I was turning off my radio and would be two hours, which is unheard of in the field. That's not what happens in the field. You have male deputies who don't have the stomach to hear this stuff and they just want to get in and out. That makes the victim feel uncomfortable. People are people and there are different personalities. Some deputies would say to me 'What are you doing here? You should be home or you should be a nurse.' I would say 'You may be able to be rough and crazy and beat someone up but there are things that I can do that you can't.' You have to see what people you have that could handle each situation best. A lot of deputies don't want to get the same kind of cases a lot. We need to spend more time and money on training to make deputies feel more comfortable and knowledgeable.

Whether to report. It takes a lot of courage to come forward and report because it is such a violation and I think a lot want to forget it. We need to provide more support resources for victims, and provide more for those who can't afford it. And we need to make follow up phone calls. Prevention is very big.

Their fear and embarrassment and their own emotional state of being. Victims fear they will not be taken seriously, that no one will believe them, that nothing will be done, and they will be spilling gory details and nothing will come from it. If the media or it was somehow more put out there that if something happens and it's a righteous one after interviewing them then we show we're here, this is what we're doing, this is who we're looking for, this is what happened to our victim, and we can show we're putting it out there because we don't want this to happen to anyone else. If we show a larger force in that it'll make other victims realize we take this seriously and they do catch people. A lot of times when we catch people, for example a case today, there is no mention of it in the media and no one knows we caught the prime suspect. This victim didn't know her suspect. We drove her to the location based on tiny things she told us and we were able to get the primary suspect. Showing victims we didn't know who this person was but we caught them, if victims see more and more success stories about their assailant being caught it makes them feel like their cry for help is not falling on deaf ears.

Believing themselves. They start to question what happened to them. Was it my fault? What could I have done differently? Just like children they tend to turn things inward and that is a number one challenge.

It is sad what the victim has to go through in a sexual assault beginning with the assault itself, the hospital visit, the invasive evidence gathering, the questions from the medical staff, and the diagrams that end up on the EMT staff reports. If an arrest is made and the case taken to trial then it's what the victim has to face on the witness stand. That is the worst. It's mostly for the DA; they're the ones who are going to counsel them before trial. They need to spend more time prepping the victim for not just their questions but also what the defense will ask as well because everything you see on TV is true about a rape victim, the humiliation, and how they feel people see them socially. In a true rape they often second guess themselves and worry what people think and they could have done this or should have done that, so being self critical the and self-esteem issues. We offer some counseling, and as far as shelters go we have a list but if you try to get that going it happens to only one of twenty people. They're either full or they can't take kids, and if spousal rape or DV to get people moved is difficult. If we try to call, they're full and not taking bodies, or they don't take kids under thirteen. If we could improve with resources to assist them; and many worry about diseases caught and are told they have to go back to the SART exam location, which is often far from their homes. Then it's difficult in terms of disclosure to go to another hospital, which means they won't go and get treatment.

I have been told by victims that they were reluctant to make a report because they were ashamed and felt that somehow the crime was their fault and that they were not going to be believed. I reassure them that it was not their fault. We need to have more counselors available. We use the DA's victim advocates but we need more of them. Some courthouses don't have the advocates available.

They often have to disclose several times. They think that they only have to tell someone once but that isn't the case. If it is a family member, there will be pressures from the family not to go forward. It is embarrassing for the victim to have to talk about it over and over again. If the victim got into counseling right away they would fare better.

The humiliation and the fact that they have been victimized in such a personal way. They are very vulnerable. They worry about their reputation and that they are going to be blamed by family and friends that they instigated it or asked for it.

For children, mostly it is fear of the unknown, fear of getting in trouble, fear of what is going to happen to me and what is going to happen to the perp, and fear of the future as in who is going to support us [financially if the suspect is the breadwinner in the home]. For older children there is also shame.

Shame, embarrassment, being dragged through the mud by family and friends, especially if there is alcohol or drugs involved. People might say 'You should not have been drinking. What did you think he was going to want?' We feel bad for these victims and we try to accommodate them. They are also concerned about facing the suspect in court.

I always ask what they want to happen to the suspect. Some will say ‘I want him to go to prison,’ but others will say ‘I don’t want jail or prison I just don’t want him to do anything to anyone else.’

They are embarrassed and ashamed because of the negative connotation of rape. They don’t want anyone to know what happened to them. Some of my victims have lost friends when they report the crime and cooperate with us.

Not knowing what will happen at the court system. The only thing I think of which I try to do myself is to explain everything to them, the pros and cons, advise them of all the resources available to them, and hope they use them. If they fail to use them then we can’t help them.

While many acknowledged that it is incumbent on that first deputy to counter that tendency, others, consistent with the guilty until proven innocent approach to victims, reserved empathy for “real” victims:

They know that because of the severity of the crime, they are going to be questioned. They are ashamed and worry about proving their credibility and they know that there are going to be a lot of questions. The fact that so many non-victims report crimes affects law enforcement response to the crime and to the real victims. I wish it wasn’t this way, but we see so many women who aren’t telling the truth that it affects our attitudes toward victims who are telling the truth. It makes us suspicious of all victims. So, if somehow we could convince the non-victims to not file false complaints, it would make things better for the real victims.

This section has examined LASD detectives’ rapport building strategies with victims, as well as the challenges faced by victims when reporting a sexual assault. Consistent with the LAPD interviewees, findings revealed two opposing trends in detectives’ perceptions of and approach towards sexual assault victims, which are best categorized as “innocent until proven guilty” or “guilty until proven innocent.” The next section transitions to detectives’ decision-making during the investigative process.

## **THE INVESTIGATION**

They all have unique obstacles. The most difficult is a preverbal child who cannot testify. Teenagers have a lot of issues they are dealing with, plus they have the extra layer of a parent finding out that adult women don’t necessarily have. Issues leading up to assault

for teens are often ditching school and drinking. The rape is still true, but she doesn't want to convey all of that other baggage because she will get in trouble and she knows it. The good detective has to sift all through that and understand that, yes, she is going to lie about skipping school, but that doesn't mean she is lying about the sexual assault. There could be ten points of contention and she's lying about nine of them but she was still raped so those cases are still extremely difficult. The last is the acquaintance rape. A woman went out drinking and was having a good time and said no after going so far and gets raped. And that is the order of difficulty. Other issues like delayed disclosure and conflicting statements, which are often attributed to victim credibility, can be traced to other sources such as the patrol officer and the quality of the detective interview. Often patrol is in a hurry and they write things down quickly. If a detective doesn't take the time to clear up then it becomes a sticky point when trying to file later.

## **CASES LEAST & MOST PROSECUTED**

This section provides an overview of the types of sexual assault cases that, according to LASD detectives' experience, are least likely to be prosecuted. While all interviewees note that nonstranger sexual assault is the most frequent type of sexual assault they encounter, the majority of detectives exhibit an understanding of the dynamics associated with child victims that does not extend to teen and adult female victims:

To be honest I've not had any of my cases result in arrest or prosecution based off a victim's statements. For example, a victim comes in and reports she was raped, and as a result she gave birth to a child whom is now three. She stated that she waited because she was scared. She claimed it was an acquaintance; that they dated, went on one date but remained friends, and then the rape occurred. In interviewing her, her stories were inconsistent and what it boiled down to was she didn't get raped by this individual but she wanted him to pay child support. It was more of a financial gain thing. Or, another case I had and spoke with the DA about the possibility of filing: my victim contacted her mother's boyfriend whom she is close to. Her life is in disorder. She has four kids with four different fathers, some of whom are in prison. And she contacts him and asks him to pick her up. They discuss stopping at store to get alcohol. In the report she accuses without saying it; she says something must have been put in her drink. I asked her who bought the liquor she said she did. When I asked who poured her drink she said the suspect. I asked did you watch the suspect break the seal on the drink and she said yes. I asked how often she drinks and she said daily to the point where she feels good and is buzzed; so on a daily basis means she drinks every day. Her story, even though it remained somewhat to form in terms of what was in the initial report, there were still loopholes in her story. I interviewed her and the suspect. She said it was not consensual.

The suspect was a sex registrant and shouldn't have been around any children. Based on what she said and the suspect said, that they drank and she agreed to drink, and three days after our interview she gets herself arrested. She had extensive arrest record, and I discussed this with the DA and the DA wasn't inclined to even interview her. Working in area I work, a lot of the issues we have are victims' reliability and credibility and the truth of the rape. One of my partners worked on a case where the girl claimed she was raped by a friend's father while visiting him. We come to find out she seduced the father and it was not rape. She admitted it wasn't, said she did it because it occurred to her he wasn't interested in her for a long term relationship. We don't take it for granted that each report is like that or say it will be a bogus report. We go and do the interviews. If the suspect is available we speak with him, but if there are loopholes and they don't match the report and the victim starts flip-flopping [does not finish sentence]. Every now and then we'll get actual righteous rape cases, but out of ten cases, eight are false reports.

Spousal rapes are hard to prove and rapes by people the victim knew, which is more often than not the case. As far as getting it prosecuted, the obstacles I've seen are reporting time. It's very common for victims not to report immediately. By reporting late they've showered, gone about their business and the evidence is gone and it will be a he said/she said type case, which is very hard to prove. The DNA and physical evidence you would get from immediate reporting gives us a chance to do the SART kits and get photos, DNA, and the evidence to help. DNA is one thing, but if there is force there are tears and bruising; there are not just vaginal or rectal injuries, but physical marks from being held down, or choke marks. If she fought back there is a good chance he has marks on him too. They [suspects] will say she likes rough sex. If it is a known suspect a lot of times they will talk. They often say she came to my house, we're dating, and, yes, it was consensual. And the DA will say you can't prove this beyond a reasonable doubt in court. These cases are often rejected.

Typically where the victim is at a party, she's been drinking, and she doesn't recall what happened to her. There are no witnesses, just her story and the suspect's story. They could be on a date but those are typically rejected by the DA's office.

The majority of house party sexual assaults result in a DA reject. Those are difficult cases to prosecute. Although I approach each case impartially and believe everybody until there is a reason not to, typically the DA does not like them. Drunk people make horrible witnesses and victims. I have not had a successful prosecution in those cases. It's 50/50 likelihood in terms of arrest in those cases. If we don't arrest the case is submitted for review [by the DA]. They look for circumstances such as corroborating evidence: injury, vaginal or anal; rug burns on the knees or elbows; if there is already a history of DV, and evidence of force.

When the victim comes forward one year later and claims she got something in a drink and woke up believing she was sexually assaulted and goes to a hospital and gets an exam, which comes back without any positive indications that she was assaulted in any way. No proof or evidence.

Date-type rapes because they usually don't come in time for us to get a blood analysis if they were given rohypnol so there's a lack of evidence as far as what they were given is not available. Depending on their [victims'] lifestyle sometimes when you present to the DA there are obstacles and they say things about juries and pre-formed opinions.

Difficult cases are the ones that you can't either prove or disprove. We get a lot of cases that you can't prove based on the evidence that you are able to collect. Or there are cases involving married women who turn up pregnant and need to explain the pregnancy, or young girls who are out late and will claim that they were abducted and raped. But sometimes you can't get victims to recant. There is never a totally good case. Either there is something at issue with the victim and she does not want to cooperate and does not want to relive the case over and over, or DNA takes too long to analyze and victims often don't want to wait that long and have to relive it over and over again. They will have to testify at the prelim and the women have to get up and speak about their experiences in front of whoever happens to be in court.

Cases that are least likely to be prosecuted are those that are DV-related. For me they're the hardest to get filed or prosecuted. Ultimately, victims are uncooperative or can't be found. They move and don't leave a trail. Victims don't want to relive the situation because the husband or boyfriend helps them financially and they are swayed by pressures from their family and children. In the final analysis, a woman just wants to keep her family intact even at the cost of her own personal safety. A strong case is one where the victim knows the suspect and is willing to prosecute, one where there are witnesses, and where the victim made a prompt report. DNA is becoming more and more important, especially in the cold cases where we get a DNA hit after several years. I've had five or six cold hit cases involving strangers and all of them have been convicted.

Least likely to be prosecuted is spousal rape or rape that involves a boyfriend. These are difficult cases because victims tend to change their mind about what they want to happen. Good cases, I have not handled that many. I have yet to have one that has been filed. I have yet to have a legitimate rape. All of them that I have had involved rapes where the victims were extremely intoxicated or under the influence of drugs and woke up next day and did not know what happened. I'm still investigating these crimes. I have one where the victim did not report for nine days and so she was not able to get a SART exam. She says that she woke up in the morning and her boyfriend was having sex with her without her consent. She has changed her mind several times about whether she wants to go forward or not. I have not had a good case yet. I keep waiting.

The most difficult rapes are those that involve acquaintances. It's very hard to get them [DAs] to file on the suspects because the suspect will say that the two of them were drinking and that sex was consensual. It's one person's word against another's and these cases don't get filed. Easy cases are those involving kids who say that they are being molested by a stepfather. Children don't lie. Especially if the victim is a teenager and the abuse had been ongoing for couple of years.

The most difficult cases involve child molestation where there is a delay in disclosure so that there is no longer any physical evidence and where there are no witnesses that can corroborate the victim's testimony. Cases most likely to be prosecuted involve quick disclosure and physical evidence. If there are suspect admissions or there is a witness who can corroborate what the victim is saying, most likely it will get a filing. DAs want to see evidence. If it is one-on-one, it is very difficult to get the DA to agree to file charges.

No physical evidence and just the statements by the victim with no independent witnesses or video that can corroborate the victim's allegations. In a fileable case there is evidence that backs up the allegation.

The hardest cases are those where they are on the Internet to conduct their crimes; trying to entice young girls or making lewd comments. The hardest sexual assaults are the ones where the victim waits to disclose so we have lost all of our DNA, we have lost the crime scene, and potential witnesses that we could have contacted if they had reported sooner. Fileable cases are those where the victim reports right away and we're able to obtain DNA and contact witnesses. When they report right away I am able to get a more honest interpretation from witnesses as to what happened. If they delay, stories change.

The most difficult are older cases where there is no physical evidence. Anytime you have a case without any physical evidence the difficulty increases, or cases involving victims who have some type of mental impairment and therefore cannot articulate what happened; or cases where the suspect completely denies any type of involvement, or if the victim is uncooperative. Fileable cases are those with DNA that corroborates the victim's allegations.

His word against her word and there are no witnesses involved. Getting the truth from each party is difficult and usually the way the story is told, especially with a divorce situation, will affect what happens to the case. Those [divorce cases] tend to get ugly and kids may be pressured to say things by one parent or the other. The key for us is trying to find out who is telling the truth. You have your victim and you know what the victim is saying, but there may be others who know something about victim and/or suspect that can strengthen your case. Good cases are cases in which the suspect confesses. Evidence helps a lot. A remorseful parent or suspect who is willing to admit to what he did.

Those that involve acquaintances or where there is a lot of alcohol involved. Those two things overlap and 98 percent of the time the DA will not file charges. The issue of consent is a perception of how under the influence someone is and whether the individual is too intoxicated to consent. Acquaintances can be an issue also especially if there was a previous sexual relationship because it will almost always come down to whether she consented or not.

Young teens in party situations where there is intoxication. The inability of these young people to account accurately for their conduct leads to questions about credibility and later a lack of ability of the DA to prosecute.



Cases that are very difficult to work are those where the suspect is unknown. If you are lucky you will have a DNA sample that will result in a match but if they're not in the database they are really hard to solve. When you don't have a named suspect it takes longer to get the DNA results. So far this year, I have had three cases like this out of five cases total where the charge was rape. When there is a named suspect and you can place that suspect in custody and have him taken to a rape treatment center for collection of DNA. To arrest, we try to get as much information from the victim and any witnesses as possible. That is always key: evidence that can corroborate the victim's testimony and if we have DNA evidence that matches.

Assaults that are reported late because physical evidence is lost and witnesses and victims do not remember a lot. A late disclosure could be one year; it depends on the circumstances.

Anything involving a teenager around junior high school age. They are the worst victims from a law enforcement standpoint because: (1) they're going through a lot in terms of their own growth and development; (2) naturally they're taciturn. Most of our male victims are younger, and most of our [overall] victims are female; (3) if it's a family assault, which are most of them, they may have been acquiescing a bit to protect a sister. Suspects will threaten to go to their sister [if the victim resists]. It takes a lot to get victims over that because they feel they are to blame. And once we get a case going they are the easiest to get to recant because: (1) mom doesn't believe them; (2) mom blames them; or (3) mom doesn't have a provider and is boohooing because dad is in jail and we can't afford to live anymore. They'll sit there and lie in court, the complicit parent or nonsupportive parent. A lot of them have issues. They're cutting because of abuse. And we get a lot of prostitutes; teen prostitutes out of South Central. Drug abuse, age, and so on make them challenging.

Late reporting is a big factor due to a lack of evidence. And sometimes credibility of victims due to late reporting is questioned. The majority of cases are filed as long as we have evidence and a good victim. What I found is a lot of the cases stand a better chance of filing if the victim is a good victim and will cooperate with the investigation and requests from courts.

I often have cases where girls are hesitant and went ahead with first report at the encouragement of family but they feel that's all they need to do and refuse to cooperate. There's a lot of cooperation involved and it doesn't stop with me and those are usually the cases that nothing comes of. It has to do with level of income of victims. More with lower income are more accepting of their fate, and they feel this is their life and they should be able to handle it on their own. When I interview them I get the feeling they weren't raised with a lot of self-esteem. A case I'm working now is a six-year old male who is extremely hyperactive. People are hearing him but not listening to him. The kid comes back to the same story but no one is listening. People are short on patience for kids with disabilities. Another problem is I have very young victims and the court says not enough information and lets throw it out. You have two-year olds who shouldn't know

what they're talking about and it's frustrating to see the crooks have more breaks than the victims.

An obstacle in these cases is that we have a lot of guys who do exposure and masturbation in front of women and kids and that tends to lead to something else such as rape. A lot of my cases where I think that people have major issues in the beginning there is not much I can do about it because they are only misdemeanors. Even if there are multiple victims, it is still just one misdemeanor. And they typically get time served. Even though they have to register as a sex offender many of them don't.

Sometimes women report being abducted and raped. They report due to the fact that they are having affair, or they are prostitutes who did not get paid, or there are those who are homeless who give bad information. These are all difficult cases.

A delay in going to court proceeding is difficult. We lose touch with the victim. In the majority of my cases the victim just goes missing. We are required to take all cases, even if there are questions about the validity of the complaint, to the DA. The DA is required to interview them before they file the case. If the victim has disappeared they can't do so and so the case is rejected.

Family members protect one another. Mothers protect fathers or kids who don't want their dad to go to jail. They refuse to cooperate and DAs will not force the victims to go to court. We have to get past that by letting the family know that this person needs help; that they need to get some type of treatment so that this will not happen again. A lot of times DCFS<sup>88</sup> will step in and tell the mother that she needs to protect her children or she will lose custody. We also get sexual assaults involving young girls. A lot of them are rape by intoxication cases. Some of those are very difficult to investigate if there is no physical evidence. In a few occasions we have been able to determine the child made it up because she did not want to get in trouble for consensual sex or for staying out late.

Victims have inconsistencies in their statements. The victim is vague about what happened. This is a very sensitive issue and victims are uncomfortable talking about the details of the assault. If the suspect is the spouse or boyfriend of the victim they are often very aggressive and they want us to go out and get this guy. They want to see us make an arrest and they don't understand the process.

It is difficult when the victim is apprehensive about talking about what happened and does not want anyone else, especially family members, to know what happened.

In summary, detectives stated that the most difficult and least prosecuted cases they encounter are those involving nonstrangers with delayed reporting, which is problematic given that these two characteristics are most prominent in both the LASD and LAPD crime reports

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<sup>88</sup> The Department of Children and Family Services.

analyzed for the present study. There is a notable distinction, however, between detectives' explanations for the difficulties particular to these cases based on whether an "innocent until proven guilty" or "guilty until proven innocent" approach to sexual assault victims informs their view of detective work. As the opening quote to this section best demonstrates, an "innocent until proven guilty" approach emphasizes that the onus is on the detective to build a rapport with the victim based on respect. DNA evidence is less salient given the consent defense is predicated upon it; thus, the focus is primarily on the importance of gathering alternative forms of evidence such as statements from all of the relevant parties that can speak to the frame of mind of the victim and the suspect at the time of the alleged assault. Conversely, as evidenced by the quote that follows it, the "guilty until proven innocent" approach emphasizes that female victims often lie, DNA is the primary form of evidence to carry a case, and delayed reporting makes a case virtually impossible to investigate.

The following are detectives' responses about the types of sexual assault cases that are most often successfully prosecuted:

A solid one would be one involving a stranger where we have good evidence, possible witnesses, and timely reporting. This is huge when it comes to preserving evidence. In these cases, identifying the suspect is the issue. If we get a DNA hit this is a solid case. But where I work, these cases don't occur very often. I can't remember the last stranger assault that I had; it may have been the fall of 2009. It was one of those cases involving a woman who said I drank too much and passed out, and I think something happened. I have only had two cases involving the stranger who assaulted the girl who was jogging in the park. The stuff I handle are the big parties where a girl gets drunk and wakes up naked in someone's bed the next day.

Cases with eyewitnesses.

Cases that are reported right away, even if a nonstranger; if the suspect is a stranger or has priors or is a sex offender living in the area; if there are witnesses or fresh complaint witnesses or cooperative victims. By the time it gets to court many do not want to revisit it; or we can't locate victims, or they are now married and want to forget it. Out of every ten cases, eight are noncooperative and the investigation continues.

I haven't seen anything other than [the nonstranger cases] described earlier. Typically it seems [the cases that get prosecuted] if they're a victim who doesn't know the attacker and there is a fingerprint or evidence left behind, and she gives a good description.

Cases where the victim is 100 percent compliant and willing to help. Even though this heinous crime has happened to them, they're still willing and adamant as it's pertinent we get their cooperation. They'll have memories and we need to talk to them. Where the victim is willing to answer same questions over and over again, where there's actually real evidence that something horrific happened. The rape victim they served search warrant for today, she was brutally beaten to the point her face was deformed. Her story stayed consistent, and she was willing to get in the car with us to drive in the area where she believed the rape occurred, and we found the location. I've had victims where I'm calling and leaving messages, going to their houses, writing letters, and they ignore me. Or they'll call back and we'll interview them and after I'll go out and do more leg work I'll call back to leave a message and things will come up to clarify and I don't hear from them ever or they give bogus addresses. If I can't find a victim there's a clearance code for that in our system. I'll write my supplemental report and I record every day that I make an effort to contact them. I'll even indicate in my report the outgoing message on their machine. It's more of a 'Cya, this is how I know I got the right number.' [I'll write in the report that] I left a message on this date on this form we have, the closeout form. Generally I use a 120 code, which is 'closed pending further workable information.' This means until the victim contacts me I have nothing further to go on. I'll also indicate if I'm unable to contact or locate the victim or if the victim is nondesirous of prosecution.

Sexual assaults involving a stranger. Typically the victim is running along minding their own business in that kind of case and they are either abducted or tricked into some position in which she or he becomes a victim of a crime.

When you have a victim that is totally cooperative with the investigation and there is physical evidence as well as her testimony and sometimes corroboration, or DNA; if a neighbor heard screaming or yelling or saw her being dragged from a place or bar, for example. But something other than her word. Corroboration comes into play when there is no physical evidence. Actual stranger cases are fairly rare. You hear about them on the news but actual stranger cases I've probably had ten. Otherwise there has been sometime of knowing each other previously, or it's a husband or family member. Spousals are difficult to prove unless there is a history of DV documented or family members attest to certain things. I've seen them filed.

In the home by a stepparent or parent where we have a good history on the suspect and we can study him and bring that out in court. In-home teen abuse is pretty successful.

Any case with a confession. Without one you've got an uphill fight. Rarely do we have eyewitnesses or DNA due to delayed reporting. The littler the kid that can still testify, with a confession, you get lots of time on those. Nobody likes anyone that hurts a little child. The last two trials I did they played the tape of the guy copping out. That, and/or a little victim, those are your best cases.

A lot of it has to do with the victim's willingness; whether a stranger or nonstranger it's the victim's ability to relay the incident. When you talk about one person's word against the other's the evidence speaks volumes about what happens. That's not to say that victims are lying, but we need something more than the victim's words because the suspect will either deny or say they in fact did have sex and the evidence needed [to counter that] would be injuries and the victim's state of mind at the time. Stranger cases are also easier because there is no knowledge or history between the people.

Those that are wonderful are multiple victims cases with witnesses, and a suspect who likes to talk<sup>89</sup> and who doesn't know his rights and wants to make you believe him and he talks too much. And an aggressive DA.

In summary, detectives stated that sexual assaults involving strangers and immediate reporting are the cases that are most successfully prosecuted, which is again problematic given that this is the least likely victim/suspect relationship that law enforcement encounters. As the sections that follow demonstrate, failing to recognize and account for the reality of nonstranger sexual assault in training, investigative, and evidence collection protocols has the net effect of affirming longstanding stereotypes of stranger rape as the only "real" rape, and—depending on the detective's approach<sup>90</sup> to sexual assault victims—ultimately impacts the quality of investigations and increases case attrition.

## **SOLVING CASES: INVESTIGATION-RELATED DISCRETION**

The next focus of interviews centered on how detectives investigate and clear cases. Consistent with our questioning of LAPD detectives, we asked LASD detectives about the dynamics involved in the decision to make an arrest, when cases are cleared by exceptional means, and the criteria to unfind a case.

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<sup>89</sup> This detective stated that, from their experience, suspects talk 50 percent of the time.

<sup>90</sup> In both law enforcement agencies, detectives' assertions about victim cooperation also varied by their approach to victims more generally. Those exhibiting the "innocent until proven guilty" approach emphasized that victims are most often cooperative and their cooperation largely hinges upon how they are treated by law enforcement, whereas the "guilty until proven innocent" approach emphasized stranger rape as real rape, and that victims often lie and seldom cooperate.

## **Discretion in the decision to arrest.**

It depends on the case. Usually I interview the victim and then I talk to the suspect. All of the information the victim provided to patrol may not be there, and we use that information to start an investigation. If I have a feeling that the victim is consistent with the statements they gave me relative to what they said to patrol and I feel this suspect really committed this crime then I like to immediately arrest him and then interview him. If I coordinate a meeting with the suspect at his house or another place that he is familiar with he is less likely to admit the crime as alleged. But when I arrest someone and take them in our environment I find that suspects are more likely to talk because they think that if they have enough to arrest me they might have enough to file criminal charges.

Often it is the believability of the victim. I've had many false allegations made that, when you dig deeper, the story changes. Like, they got home late so they had to make up a story to a husband or boyfriend. Through speaking to them and with experience you can mostly tell when they're telling the truth if they're a true victim with what she says—if there is anything corroborating or physical evidence and the totality of evidence. If it's a named suspect I will speak to them prior to making the arrest. I will go to their house or have them come to the station. If the suspect is in their own surroundings you can get more information because they'll feel a little more relaxed and they feel they have the upper hand. At the station in a strange room is different. If it was a violent attack then we arrest and bring them to the station for officer safety purposes, but it depends on the crime and their history, like if they have a history of guns or violence.

Based on what's provided in report and from the victim. And if we're fortunate to get any DNA return or match. We generally always call the victim in for a second interview. We like to speak with the victim before making an arrest. Then we'll interview the suspect if he's not in custody. It's hard to say because each case isn't cut and dry. We aren't always able to interview the victim and suspect. Sometimes it's solely based on the interview with the victim because the evidence and circumstances are so much leaning toward the suspect that an arrest is made.

I'll arrest if there is a threat to public safety, if there's a good chance he'll do it again, and whether I have enough evidence to get a case filed. I'm not going to waste my time and arrest the suspect if I don't think I'll get the case filed. If there is enough there in terms of an identification but their DNA is not in the system I'll arrest to get their DNA in the database to see if there are unsolved cases that match his DNA. A lot of it has to do with public safety.

If there are injuries to the victim. It depends on her ability to recall what happened and to identify the suspect and if there are witnesses or some type of evidence left behind, like from a SART exam.

Where does evidence lead? If there is direct evidence of a crime then he is arrestable.

For an arrest we'll take the victim's word as long as the word is believable and the circumstances are reasonable to believe that this occurred. If he is named and known we will arrest him. What happens after that is, you know [does not finish sentence]. But we will make an arrest.

I don't have enough experience to answer.

The DA is hesitant to put someone in jail just based on the victim's testimony. They are reluctant to file charges unless you have DNA.

To make an arrest we need the identification of the suspect, the first written report, the results of the SART exam—if it was done within seventy-two hours, and a cooperative victim; someone who is willing to go the distance with you and have an interview with the DA. Hopefully there are some witnesses. If we did arrest someone we would do a search warrant and hope to get evidence such as clothes or a condom.

In my job as a detective I make an arrest if I have enough evidence that the case will be provable because most of the time I have the time to work that up before taking it to the DA. That's different for the field officers who are dealing with probable cause only. Sometimes with simple disclosure from a victim they'll make an arrest and that's fine, but then we come into it and attempt to close the gaps to bring it to the standard that the DA wants, beyond a reasonable doubt. It's a little different than probable cause. Before making an arrest we want everything we need before making a filing. It's very similar to homicide in that they won't arrest the person for a long time until they have what they feel they need to prove their case, and we do very much the same thing. At the station level we make an arrest simply on probable cause. We have a probable cause detention form filled out to be approved by a judge. Probable cause is a lot lower, and often we are forced to release suspects because there simply isn't enough but perhaps we'll gain more later.

That's a good question because we do it so automatically. You want to consider the problems and credibility, reporting, the SART exam. If you have a victim that does not have any motive—and most don't—and there are no extenuating circumstances; and you have a victim saying she was sexually assaulted and this guy doesn't have an alibi—for example, saying he was out of the country—then you should arrest. It is as simple as that. He should be going to jail. You should not take into consideration what the DA is going to do. Why are sex crimes different than any other crime? If you say this guy stole my wallet, even though he doesn't have it because he threw it away, we shouldn't make an arrest? Why is there a higher standard in these cases? Victims are put on a trial from the beginning. Why should we look at it differently and make the victim jump through hoops when we wouldn't on any other crime? We have probable cause if the victim says it, he was in proximity, and he doesn't have an alibi. He should go to jail.

It's about the safety of the victim and the safety of the public. It doesn't matter about beyond a reasonable doubt. You have to arrest him whether or not the case is provable. Absent that, it depends. You don't take a case to the DA without proof beyond a

reasonable doubt. If I don't have enough to prove in a jury trial I won't bring it in. If I believe a crime has happened and I don't have proof beyond a reasonable doubt then I have to arrest him and get a confession. I need to gather more evidence. I need a SART of the suspect. I need a warrant or a suspect SART.

Every case is different. If a situation arises where the suspect is in a location and we can go arrest them, we will. The faster the arrest the more likely we will gather more evidence. If the victim claims they fought the suspect, the suspect will have defensive wounds. And once they are arrested you can take photos and evidence needed to support an assault rather than waiting several months or year when injuries have healed.

I believe my victims. I look at everything they tell me and I can tell if it's a kid wanting to get back at a parent but most of the time I believe my victims. I don't believe people are that evil that they'd accuse someone of these things. When I first came to the unit I wanted to arrest everyone. Six months into it I learned there are other ways to attack that instead of arresting per se. I found that arresting too many people was taking too much time and it was taking away from my other cases. I think about whether it will get a filing and depending how each case goes I will see it get closer to an arrest.

In summary, consistent with LAPD detectives, LASD detectives cited various factors that impact their decision to arrest a sexual assault suspect. All interviewees conceded that probable cause is enough but they differentiated themselves from patrol in the extent to which they abide by that standard. In so doing they identify more with the district attorney's office and, in effect, assert a "proof beyond a reasonable doubt" standard for arrest in sexual assault cases. The findings from this study suggest that this perspective is either the precursor to or consequence of the pre-arrest charge evaluation dynamic in nonstranger sexual assault cases. Because this process is described at length in Section V regarding the Overuse of the Exceptional Clearance and Section VII, which describes the findings from LAPD detective interviews, this section is limited to reporting the findings specific to LASD detectives vis-à-vis this larger case processing environment involving law enforcement and the district attorney's office.<sup>91</sup>

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<sup>91</sup> It is worthwhile to reiterate the couple differences of note between the LAPD and LASD in terms of clearing cases: (1) while not consistently practiced, the LASD correctly trains that both misdemeanor and felony arrests are cleared by arrest for UCR reporting purposes, regardless of the DA filing decisions; (2) the LASD is more likely to clear a case exceptionally without an identified suspect, which is incorrect per UCR reporting purposes; (3) whereas the LAPD sticks to four possibilities for case status categorizations (cleared by arrest, cleared other, unfounded, and



**When to Clear a Case Exceptionally.** This section describes detectives' assertions about when a case can be cleared exceptionally. While victim cooperation is a reason to exceptionally clear a case per the FBI's Uniform Crime Reporting criteria, it must be considered in relation to the previous sections that highlight the varying approaches detectives exhibit towards victims and how much victim cooperation is contingent upon how s/he is treated by law enforcement. It is also important to underline that a DA reject is not a basis to clear a case exceptionally whether an arrest occurs because the FBI's clearance standards are based on probable cause arrests. Thus, if an arrest is made, for FBI reporting purposes the case is cleared by arrest. If a detective chooses to screen a case by a DA prior to making an arrest and the DA states there is insufficient evidence to prove a case beyond a reasonable doubt at trial then the case must remain open. Otherwise, law enforcement is counting cases as "solved" in which there was not necessarily a thorough investigation, a suspect was never arrested or sanctioned, the DA's office has said there is insufficient evidence to move forward, and victims see no meaningful action in response to their report. The below response from an LASD detective illustrates a correct example of a case that should be cleared exceptionally:

When the suspect is dead the case can be cleared exceptionally. I had one where the boyfriend kidnapped the girlfriend, held her for two days and raped her. The police surrounded the house and he committed suicide. Because prosecuting him was impossible, we cleared this case exceptionally.

In this case, law enforcement knows *who AND where* the suspect is, has *probable cause to arrest* the suspect, but *is unable to* for reasons beyond their control *unrelated to personal discretion*. To

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investigation continued), the LASD has all of the following as closeout categories for cases: No Further Workable Information; Exceptional; Suspect Not Available By Another City Or State; Da Reject; Da Reject, Suspect Returned To Department of Corrections; Victim Refuses To Cooperate (Not Referred To Da); Suspect Serving Time For Another Offense; Juvenile Diverted; Juvenile Released To Parent, No Prosecution; Felony Filed, Warrant Obtained, Adult Suspect, Whereabouts Unknown; Insufficient Evidence (Not Referred To Da); Misdemeanor Filed, Warrant Obtained, Adult Suspect, Whereabouts Unknown; Extradition Denied; Application Approved; Application Denied Or Withdrawn; Missing Person.

varying degrees the following examples suggest that detectives do not have a clear understanding of when cases are to be left open, cleared, or unfounded. This is partially attributable to the numerous case closeout options that the LASD has utilized to date and—as of this writing—are working on simplifying:

If the defendant has died, if the defendant is serving time for another, more serious crime. But these are rare. Cases where no crime occurred are cleared as no crime or insufficient evidence to prove that a crime occurred. Sometimes cases are taken to the DAs office and we get a reject, but often we just close the case as insufficient evidence. We have a code for DA reject and we put in the reasons for the DA reject.

If we make an arrest and the prosecutor decides not file charges, we send our packet to them. They'll kick it back with code letter b, insufficient evidence, and we would put adult arrested, submitted for evidence, DA reject, lack of sufficient evidence.

I haven't had any cases that are cleared exceptionally. The rapes that I've handled are either cleared out victim uncooperative or unable to identify suspect. If victims won't look at photographs to identify a suspect, won't submit to a SART exam, and they're unwilling to come to court to testify, those would be rejects. If a victim is later recanting saying she was just pissed off at him and made those allegations we clear those out at the station. We close those out pending further workable information. We can revisit it later if something comes out later like DNA.

If the victim is non-desirous of prosecution that means they report it, but they don't want to prosecute. Typically even if the victim is not desirous we still present the case to the DA. That is how the sergeant likes it done.

They are usually cleared exceptionally if the DA rejects or because the victim does not want to prosecute. And if victim does not want to prosecute the DA won't prosecute.

When I find out that no crime occurred the case is cleared as no crime occurred. If we make an arrest and the DA rejects, the case is still cleared by arrest but the disposition of the arrest is DA rejected due to insufficient evidence or some other reason. If the victim disappears the case would be cleared as inactive because we are unable to proceed, cannot move forward, unless we find the victim. If the victim does not want to prosecute and no one is in custody, in this situation, I would present the case to the DA. If the DA rejects it would be cleared exceptionally.

All of my cases I send to the DA. If a suspect is identified I submit the case for review.

Take the one I referred to earlier where the victim comes in earlier and says she had GHB in her drink and woke up and was sexually assaulted. Those are very difficult to make an

arrest on when there is no evidence linking another person. It becomes cleared exceptional by 'no further workable information/not referred to the DA.'

I don't have enough experience to answer.

Ones where I take the case to the DA and the DA rejects. I just took an oral cop case to the DA. The victim and suspect were boyfriend/girlfriend and she did not report it for several months. The DA rejected it and it was cleared exceptionally.

The ones where the victim goes missing. Those cleared exceptionally are pending further evidence about the location of the victim. If the DA rejects the case the clearance changes. There is a different code for these cases.

Most of the sexual abuse cases have to be presented to the DA prior to closing. The closure code would be a DA reject. If the suspect is known I present the case to the DA prior to making an arrest. The only case that I would clear exceptionally is a case in which the suspect is unknown and we have exhausted all investigative avenues. If there is no physical evidence, we close it until we get additional information that can lead to the identification of a suspect. If there is nothing else to help us find a suspect, I close it "other." It's closed as lack of workable information or suspect unknown. If it were to be remain open that would not be good because we would have a large number of uncleared cases. Example: the girl goes to a club, gets drunk, and makes an allegation that the guy she met took her back to his house or hotel and forced her to have sex. He says that they had sex but it was consensual. I would say that 90 percent of my cases involve alcohol. I would present it to the DA and it would be a reject and then cleared exceptionally. If no identified suspect we usually clear it as 'no further workable leads.' It will sit as a pending case until the DNA comes back to see if we get a hit on a suspect. Closing it as no workable leads does not mean that it stays closed forever. We can always reopen it later.

The victim does not want to prosecute. Usually it is the victim that dictates the direction of the case. If she does not want to prosecute it will be cleared as victim refuses to prosecute. I had a recent case involving a woman who waited five months and only reported when she got pregnant. It turned out that she was with an escort service and that is where she met the suspect. We wanted to put her on the phone for a pretext phone call but she refused. She did not want to contact the suspect. We contacted her husband and told him what happened. It turned out that he opened the investigation hoping that we would do the DNA to prove who the baby's father was. She recanted. She said it never happened and she just wants this to go away. This case was cleared as unfounded because the victim was uncooperative in the investigation. I have not personally had a rape involving a stranger yet.

Will usually be the she said/he said, which we are unable to prove. During the course of the investigation we just can't determine what happened. These will be cleared as insufficient evidence. And cases where the victim is uncooperative.

Most of the ones involving acquaintances. If you have someone who says I drank something, I was sexually assaulted, and the next thing I knew I woke up in bed with Bryan. I talk to Bryan and he says, yes we had sex, but it was all consensual. Absent witnesses who saw him put something in her drink or saw him drag her into the bedroom comatose, these cases won't get filed.

The statutory rape cases: an eighteen-year old who has sex with a sixteen or seventeen-year-old minor. These are cleared other because of insufficient evidence that a crime occurred.

Physical abuse cases for different reasons. I receive a lot of cases where a father reported to LASD that his biological son was abused by his stepfather, which is his ex-wife's current husband. I closed that out as no crime because the injury was minor and based on the totality of the circumstances it seemed to be within the realm of normal. These tend to be closed out as no crime/insufficient evidence. We challenged him and he realized this was unfounded. Another example: a young age victim who is not able to qualify as competent witnesses would be cleared exceptionally. But if the victim is thirty, regardless of age, we would investigate the case.

That's a big chunk of them. Cleared as no crime or unfounded are very rare. The insufficient evidence is where you don't get a filing, or when you don't even take it to the DA. Usually if you go to the DA the detective is convinced they know who did it. One that falls in this area is not being able to identify the perpetrator. If identified, consent becomes an issue. If it comes down to he said/she said and there is no injury then those become more difficult. It doesn't mean they aren't prosecutable because there are a lot of other things detectives should be doing. We could cut that number down dramatically, and one of things we've learned having the specialized unit is that you're not out on the ship by yourself. In large agencies like ours all sexual assaults should be under the same roof, no matter the age of the victim. All cases should be handled by detectives who want to be there.

Crap such as mercenary people: spouses feuding with each other and child custody. Ninety percent of those cases are cleared exceptionally because they are garbage. People are trying to use the justice system to get what they can't get themselves. Other cases that are cleared exceptionally could be those with noncompliant victims, or victims who won't disclose. There is a possibility a crime happened but we can't go any further. If there is something wrong with the allegation, or the suspect won't talk, I'm not going to put an arrest on someone for sexually abusing a child when I don't think there is evidence to support an arrest.

A warn and advise type thing. If we discipline a mother who spanked a child; a one time thing when parents apologetic and remorseful, and accepting of parenting classes.

After asking detectives about the criteria to clear a case exceptionally, we asked about the pre-arrest charge evaluation at the district attorney's office and whether that is standard operating procedure in sexual assault cases. Answers ranged from "Yes, all of the time," to "It depends," to "That is a case-by-case decision that we make." Others elaborated further, stating that:

If I had probable cause and believed that the individual had committed the crime, I would go and arrest him.

We will make the arrest first and then take the case to the DA if the evidence is there. The next day we will take the victim to the DA for the interview.

The majority of cases where the suspect is out of custody or where there is a known suspect the DA will review the case regardless. They'll want to speak with the victim. Unless it's just a blatantly obvious this is the guy then we don't do a DA interview with the victim prior to arresting the suspect. Like this case today, she was gang raped and so brutally beaten, it's obvious. Or another case where the victim was claiming she was sexual assaulted by the cable man in her own home. Even though we're running the case by the DA the guy was arrested. But when the DA filed the warrant for arrest they also interviewed the victim. The DA will determine whether to file when interviewing the victim.

It depends on the circumstances and where the evidence leads. If it looks like it is a viable arrest then I will effect arrest and submit the case. Either way I submit each case to the DA.

I don't think that's legal. If I were to do something like that, it would be all hypothetical.

A lot of the times it's the first responders who arrest. If I get the case and no arrest was made then the following morning I make the determination for warrant for additional physical evidence or I obtain an arrest warrant and evidence. I consider public safety and destruction of possible evidence to support the victim's allegations. Mostly it's the victim's safety and public safety. It's hard because each scenario is different. If she's alleging her husband and they live together and he's still there sometimes I'll either get consent or I'll write a warrant. I'll speak to the victim before making the arrest because often they will fall back in love in DV cases. I'll ask if she's had contact, if she knows where he is, if she has additional injuries, and where he works. If there is enough with her statement, injuries, and prior DV, we usually make the arrest prior to presenting to the DA. I have a case where I know where the suspect lives, but the victim is all over the place and hasn't made time to speak with me. She just contacted me from rehab. The case is almost one month old. I left a message with the suspect yesterday. That's an example of where I didn't go to arrest him immediately. I have questions for her prior to making the arrest.

Usually I will make the arrest. If I can't take the case further and I have doubts, I will present it to the DA who will talk to the victim and decide whether to file charges or not. If the DA says that there is insufficient to go forward that will be cleared as a DA reject based on insufficient evidence. If I come up with additional evidence later I will re-present the case to the DA and try to get it filed at that time. If the victim is not satisfied, it is up to the DA's office to refer them to another DA and have a second set of eyes look at the case. What I am seeing with these cases is that a lot of the DAs are filing the case and presenting it to the jury. They are putting the onus on the jury because the DAs are getting heat for not filing and not fighting for the victims. There are more and more cases where the DA knows it is not a strong case but will put it forward anyway and let the jury decide or see if the defendant will take a plea. The DA will tell the victim during the interview why the case was rejected [if they decide to reject it]. When he is talking to the victim, I am present. He reviews the reports before he brings her into the room for the interview. They want to get a feel for who the victim is and how the victim will come across if she has to testify. Victims usually understand. Many are glad that there is some kind of ending to this process.

Good question. There are a lot of things to factor in. It is a complex question. It depends on how strong the case is.

It depends on whether the suspect is a flight risk or if the suspect is in the home and is a danger to the victim. If the suspect is a businessperson and you know that he or she will show up you can present the case to the DA and get a warrant for that.

It depends on the time frame and the fact that we only have forty-eight hours to develop the case. If the suspect is a danger to the victim or to anyone else we will make the arrest.

I will try to pull everything I can together before I take it to a DA for a decision because once they reject it, it's harder to approach them the second time. Unless there is some exigency involved I will let the person stand out until I can push it through. Yes, we try to gain further evidence. We use a lot of techniques to gain corroboration using the suspect. Once he's incarcerated you're not going to get it.

You do make the arrest but once you present the case to the DA, if they decline to file the charges then the suspect is released. If we have a named suspect but suspect is not in custody, we will present to the DA and if the DA believes that the case is fileable, it would result in a warrant for arrest.

Sometimes, and some detectives and agencies do it more than others, but yes. What should happen if you have a quality DA and detective is they go into this with an open mind. The DA should be reviewing and reading all of the reports and not just relying on the detective to summarize what happened. You should get a summary but also make sure the i's are dotted and the t's crossed. It is important to have a fresh set of eyes.

We then asked detectives for a rationalization of the pre-arrest charge evaluation process:

If we have an opportunity to make an arrest we make an arrest. If there is enough probable cause to make an arrest and we know who this guy is then we'll do the warrant and make the arrest and do it all at once with the DA. We'll do the suspect filing and the DA interview and let the DA figure it out.

To get insight on what the DA's office would need for the prosecution in the case. To get their thoughts on the victim, on the situation; what they would prefer to have in addition to the investigation we already have. I have a particular case at the moment where the allegations are there and it is going to be a he said/she said thing. She reported five days later. She had sex with her boyfriend three times since the rape allegation but now we have DNA from the boyfriend. There is a credibility issue on her part because she has prior reports and drug usage. I haven't even spoken to the suspect in this case. He can flat out deny it and there's not going to be any DNA there. I ran the scenario by the DA and if there was anything out of the ordinary that he would prefer I do.

Typically we file for warrant and if the case is filed then we make an arrest. If it seems questionable either by witness statements or other facts that support the suspect's standpoint then it is rare that I affect an arrest. Typically patrol goes out and investigates. They'll try an arrest the suspect and then the case comes to me.

If the person is a huge risk to the community or to others in the household, we will make the arrest regardless of the victim's cooperation. What the DA likes to do in rape cases is a pre-filing interview. Sometimes if the case is very complicated, a she said/he said—in a case like that I would wait to make the arrest to make sure that I had a solid case. I will not make the arrest if the DA rejects the case. We have probable cause to make an arrest but if we already know that it is a reject then there may be legal issues with regards to the detention of the suspect.

It all depends on whether I know where the suspect is and what the other evidence is. If I can't find the suspect, I will submit it for a warrant and then an arrest warrant is issued by the DA and signed by a judge. But if I know where the suspect is and have probable cause to make the arrest, I will arrest him and then present the case to the DA.

In sexual assault, in 75 percent of the cases we do present it to the DA first. I like to consult with the DA first before I make an arrest. But if there is corroborating evidence I would absolutely just go and make an arrest.

Usually in these cases, the ones that we will arrest right away is a case where the victim makes a prompt complaint. In this case we can go out and get the suspect. But if there is a delay, the DA wants us to present the case to them first.

It depends. Usually if I have probable cause and it is a sexual abuse, I make the arrest first and then present. It may depend on the DA. [At a branch] the DAs like to review everything first and then if they don't reject we get a warrant and make the arrest.

Sometimes you are not sure what the DA is going to decide. They may want additional evidence and want to talk to the victim first. If we go ahead and make the arrest, we only have forty-eight hours to do this additional investigation before the suspect is released. If the DA is just going to reject the case there is no point in making an arrest. If I have enough evidence and know that the DA is going to file, I will make the arrest. But if I have doubts, I will let the DA look at it first because I want the arrest to stick.

It depends on the totality of the circumstances. We would make the arrest if I make contact with the alleged suspect and he is evasive or uncooperative. If he does not want to come in, usually what I will do in this case is take the case to the DA. The DA would say that this is a fileable case and I would get the warrant and make the arrest. If the DA says that it is not a fileable case, I don't make an arrest.

If he is not returning my calls or saying that you need to talk to my attorney, in some circumstances I would make an arrest and send it over to the DA. I hope that he will talk to us. DA rejects, in my personal experience and in my particular cases, most of them I clear as insufficient evidence. About 65 percent have been rejects or closed as insufficient evidence.

If I have DNA or physical evidence I will probably arrest him before something bad happens like he flees the country, kills himself, and hurts the victim. Arrest is the last thing I want to do if I have a weak case because then we only have forty-eight hours to get charges filed. And in these types of cases, time is on our side. Once contact with the suspect is made, you lose the element of surprise and that is huge. As far as taking it to the DA's office before arrest, I do that rarely. A Ramey warrant is a very low threshold. It's a probable cause warrant that judges are very likely to sign. It's good enough for arrest. You want to get the Ramey warrant because it protects you from civil liability in case down the road something goes bad. If the judge is not willing to sign it is a signal that you need to reexamine your case. For those purposes, would want to get a Ramey warrant. But that is different from presenting it to the DA's office. These cases are esoteric and complex and we need specialized DAs who know the law with regards to these types of cases. Too often we have new DAs who don't know the law and don't know what they are doing. Personally, I don't need the guidance or the advice of the DA. I know the law just as well as the DA—perhaps better—so I don't feel that I need to check with someone on this. I have been doing this a long time and feel pretty confident that I know what to do.

We don't necessarily have to present it to the DA in order to make an arrest. The rationale for presenting it to the DA in the situation where you do have probable cause but you might not have enough evidence to get a filing. If you are unsure about whether the DA will reject or not you present it first so that you cross all your t's and dot all of your i's. You may want to get advice from the DA about the route to take and lay all of the evidence out. If we do arrest and the DA releases him from custody there is a chance that he will destroy evidence or that he will flee. If the DA rejects, it is rejected. If there is an additional victim the case can be reopened. I believe that you can have the DA's supervisor look at it [if you disagree with their filing decision].



If we had a fresh rape—meaning the girl was walking on the street and got dragged into the bushes and she screams and neighbors call the police—if she does a field show up and identifies the suspect, that will be an arrest. Other types of cases we present to the DA. It depends on the time frame and the fact that we only have forty-eight hours to develop the case. If the suspect is a danger to the victim or to anyone else, we will make the arrest. If we arrest and the DA declines to file charges it will stay as cleared by arrest but we will note that the DA did not file. If a person is arrested it will show on their rap sheet that the suspect was arrested but the DA did not file charges. I can tell within five minutes of reading a case whether it will be filed or not. Most of them unfortunately get rejected because we can't try them to a jury. DAs are very good about being able to explain to the victim why the case can't go forward. Some victims get this but others go to the other end of the spectrum. I try to prepare them for the possibility of not filing the case—but the DAs I work with will explain in detail why the case is not filed. In ten and half years I have not gone to trial on any of my sexual assault cases. They either don't get filed or the suspect takes a deal after the DA filed.

I think each individual investigator is different, but I take it on a case-by-case basis. I make an arrest when I think the suspect will flee to Mexico or to another state. We have to present all sex crimes cases to the DA's office but with physical abuse we have the option sometimes to close them out and not present them to the DA. The Bureau policy is we must present all cases to DA.

A review should take a considerable amount of time. It is not up to us on whether the DA can win it, it is whether he did it. You know when you have interviewed hundreds of victims whether you have a credible victim. In my mind it is beyond a reasonable doubt but we can't let the DA's filing practice influence us. The biggest thing a detective has to get down pat is consent. That is a big issue. The best thing you can hope for, especially when having DNA, when you go in to interview is the suspect says he didn't do it. You don't want to teach him to say it was consensual. You have to lock him into a story, and record it. It is important to document initial statements and get them in because often they are the most truthful or they could show he is a liar. Prior to making an arrest you need to get everything you can possibly get and arrest once you've done all of your investigation. Why do people not do that and let the DA guide their decision-making? For some reason we have this taboo about ruining someone's reputation on sexual assault. We'll arrest them for burglary, for robbery, but not sexual assault. That term raises people's awareness. Sometimes detectives are afraid to make that call so they will go to the DA and let the DA make that decision for them. I'm not saying you make the arrest in every case, but I'm saying you don't treat it any differently than you do other felonies. I think it is fear of labeling this guy a rapist.

We take mostly political cases to the DA's office; the ones where the front office gets involved like priest cases, or if it's a significant personality, someone on the City Council, the Mayor, or if they're in law enforcement. In some cases they have ordered people not to arrest. It happened to me and I ignored them and I went ahead and got a confession. Another example would be if you need an extradition. If it's a case and someone might say you're biased and you want to cover yourself. Every once in a while I

will do that in a case when I want to use an arrest warrant as a prop. That's for me; others do it differently. But I prefer to have everything done when I take the case to the DA. In terms of in and out of custody interviewing, when the suspect is not in custody it is not real to them, which sometimes you want to do. But if in general you think he won't give it up then you want him in your house and on your terms; otherwise if you're interviewing him in his home he technically still has control. You have an advantage of having people in your environment. It is real to them when they are dragged out of bed and taken to the station. You have your props: the medical exam, a warrant, DNA, etc. It's not an all-or-nothing thing though. Sometimes I will go their house as a way to soft peddle them.

If you don't have the ability to arrest the suspect then you present the case to get an arrest warrant so if the person is stopped then warrant will come up and person will be arrested. Another example would be is we present a case to see if the DA feels the case warrants arrest or if they request any additional information to make the case stronger.

Again I am trying to have credibility with the DA. I don't want to give the impression that I am Wyatt Earp and I'm out there for everyone. I understand they're under as much pressure as I am and there are time limits and if you make an arrest you have time limits. But if you go to a DA and present a case they can give you advice as to how to strengthen a case.

When we asked LASD detectives if the pre-arrest charge evaluation at the DA's office is standard operating procedure for all felonies or only for sex crimes responses ranged from "In sex crimes only," to "No, in robbery and a large amount of DV," to "All crimes." Others elaborated and stated the following:

Not only with sex crimes, it can happen where the case is presented to the DA's office. Often we don't have the time to search out the suspect so it's better to get the warrant. If something occurred recently the likelihood of arrest is higher. If we know who the person is we can or cannot given circumstances. We are less likely to arrest if the case is old, as in several months or years old Can we? Yes. Should we? I don't know. If a victim claims she is a rape victim I cannot tell her she is not a victim. If in her mind and heart she thinks she is a victim I can't take that away.

It is up to the individual detective. I don't do it with all sex crimes, just the unique ones. It is not the norm. I don't talk to the DA prior to filing on all of my felony cases if there's something I think I may have missed or there might be something out there that could help get it filed. It's unfortunate because did something happen in that house [a case example earlier described]? Probably. She's claiming he put something in her drink, but she admits to alcohol consumption daily and marijuana and ecstasy use weekly.

It depends on the case. Typically my cases are the party rapes and the victim does not remember what happened. I think there's been a lot of times where the field units don't have time to make the arrest or won't make an arrest and they leave it to the detective and then we present it to the DA. If it's rejected then we won't arrest.

It depends on the agency and the detectives. Homicide will make an arrest if there are incriminating statements, and I will take a case to the DA and present it as an in-custody arrest. If you have reasonable cause to arrest you should be arresting. We don't have any policy. If we can make a legal arrest we can make it.

The DA does not do pre-arrest review with other types of crimes. Sometimes it is better to immediately arrest and sometimes it is better to get the DA to file it and then get the arrest warrant.

Sexual assault is a little different because of the consent issue. You don't have a consent defense in robbery and you don't have to register as a sex offender if convicted of a robbery. It is a very sensitive-type crime and raises a whole host of issues that other crimes don't raise.

The following are detectives' responses to what happens to the case if during the pre-arrest charge evaluation process the DDA says that it does not meet their standard for filing:

This happens all too often. It depends on the detective and case but some DAs will reject pending further investigation. In that case you go back and do whatever they need and present again. Some detectives just, unfortunately, close the case out and forget about it forever. Some detectives will come screaming to me and say this is a bunch of crap and we will take it to their bosses. Rarely, if ever, does it get overturned. If the first DA rejects it the second and third will also. And they are for ludicrous reasons. I've had suspects saying I don't know her, I haven't had sex with her, and we found DNA. And a DA rejected the case because of insufficient evidence saying the victim first said to patrol that the suspect had a gun and then to the detective a knife. It goes back to a lack of understanding of trauma. Why would the DA say it could be consensual when the suspect wasn't even saying that? I think the reason is that the filing DA doesn't like putting a trial burden on other DAs. Some of it is the national political implication in terms of conviction rates. They pick only slam-dunk and sexual assault cases are always a lot of work. You have to rehabilitate the victim. Defense attorneys attack rape victims more than in any other case. That's the nature of the crime. These cases are difficult but that victim deserves her day in court. And, to be fair, some of it is law enforcement's fault. They don't address the conflicting statements. That detective should have asked the victim why did you first say gun and then say knife. They should ask the patrol officer for clarification. Detectives take short cuts. They get overworked and get too many cases. All of this can lead the DA to say screw it; this is too difficult. But you can't say it's too

much work when this person's life is on the line and their quality of life. There have got to be cases where you file because you know he did it.

The DA will send the case back to me for further investigation.

They reject it and we close it out at the station level. We will notify the crime lab not to destroy evidence in case we need it for the future. I notify the victim. We recommend the victim get counseling.

DA Reject.

I notify the victim of the DA's decision and refer the victim to counseling after telling them that the DA declined.

If I make an arrest and the DA rejects it, it is still cleared by arrest. If someone is arrested, we clear it as a felony arrest. Then on the arrest disposition you indicate that it was a felony reject.

The ones that I have seen that get filed are the real rapes, those involving strangers and victims who are injured. There was a man who was breaking into houses and brutally assaulting elderly women. He was doing this in three different cities and they made the connection using DNA. He got caught red-handed and other cases were combined based on DNA. The DA did file that case, but it's five years later and it has not yet gone to trial.

If the DA doesn't file, there are few options. You need to know the reason why he decided not to file, and usually it will be insufficient evidence to get a conviction. If the DA feels that we don't have any evidence to get a conviction we are not going to put the victim through the trauma of having to come to court and testify and ultimately to lose. If new information comes out we can present the case again with the new evidence and try to get a filing then. But generally a DA reject is where the path ends.

If the DA rejects, it is rejected.

The case gets closed as DA reject. We document on report the reasons the DA rejected the case.

I'll ask why. Usually it is for a lack of sufficient evidence such as no admission, evidence, or corroboration. They reject it. I dropped one off this morning and I thought it might be a reject but I spoke to him personally rather than him just reading the report. For every allegation I enter the suspect in CACI<sup>92</sup> they remain in there for ten years.

In summary, the cases detectives most often associated with the exceptional clearance are

the "He said/She said" cases involving acquaintances that undergo the pre-arrest charge

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<sup>92</sup> The Child Abuse Centralized Index

evaluation at the district attorney's office. When prosecutors decline to file charges due to a lack of sufficient evidence detectives incorrectly clear cases by exceptional means. Given that incorrect case clearance strategies are addressed at length in Sections V, VII, and XI, we asked detectives about the investigative strategies they utilize to find the corroboration required by the district attorney's office.

**Corroboration in She Said/He Said Cases.** The following responses describe how LASD detectives seek corroboration in teen and adult nonstranger sexual assault cases:

We let the DA hash that out. We go to the location, look for ourselves, interview neighbors and business owners, and look for video cameras. We're going to exhaust all avenues to find out if there is anything there and we will take it to the DA. On a case like that would I make an arrest? You can't really say yes or no if you'd make an arrest. You don't know. You have her story, and you have nothing to corroborate it with. You can put in for a Ramey warrant, or arrest the guy, or you can request a warrant filing from the DA. In the worst-case scenario you put in for the Ramey warrant and the DA kicks it back for no corroborating evidence. We did our part; we arrested and the DA rejected.

A pretext phone call, but I haven't had success with them. My suspects have not admitted. It didn't work out. I've seen detectives with both success and lack of success. We are looking for any evidence left behind like video surveillance. Those are hard cases. Or statements from friends who could possibly corroborate anything that led up to the crime. We need to get the suspect to admit it. It depends on the suspect's level of education if they talk to you. More often they lawyer up.

I take it off my shoulders and put it on the DA. I investigate the case, take both of their statements, talk to witnesses and get the witnesses' statements. I ask the victim who they spoke to immediately after and work the case backwards and hear what was stated afterwards or prior; for example, did she say 'I think he is so hot. I am going to try and seduce him.' And I do the same with the suspect. I say 'Tell me the next person you saw and what did you tell him about that night.' It may seem pretty simple but statements stated to friends can be deemed truthful so that information can help sway the case one way or the other with the district attorney.

I do two interviews of each and then wrap it up and give it to the DA. Do you arrest the suspect in that case? Law enforcement has a grey area there. If I have a suspicion I will make an arrest. The grey area is in not making an arrest at that time and presenting it to DA for further evaluation. The grey area is broader than rape.

I do a criminal history check of the suspect. I contact prior victims and ask about prior sex acts. I talk to neighbors about whether they heard screaming. I check their work history as something to corroborate his different sides if he's coming across as being totally innocent and never doing anything at all. Sometimes custody battles are going on with the children and I try to talk with kids if they're old enough and available. I don't like getting young kids involved unless I absolutely have to. Sometimes I'll offer the victim as well as the suspect a polygraph. Our department policy is to not test victims. In some sexual assault cases we'll ask the suspect if they'll take a poly. We can't use it for court but it's a tool. A lot of times they won't consent to a polygraph. Often if it's a spousal rape allegation they'll already have an attorney. Often in a he said/she said they'll have already contacted an attorney or they'll refuse to speak with us.

Sometimes you can do a pretext phone call where the victim calls the suspect and talks about the incident. Some suspects may send the victim text messages that can corroborate her testimony. I try to get evidence that backs up her story or his, or I'll polygraph the suspect. While interviewing the suspect 99 percent of the time I take a male detective with me, and 95 percent of the time I leave the room and the male detective gets the cop-out. Suspects don't respect woman officers. The polygraph examiner is a guy and he is great. He can talk to the suspect in a certain way and use ruses to get them to talk. When I see that we aren't getting anywhere I will make an excuse to leave. With me in the room they won't talk. Even if I stay in the room I let the guy do the lead. This is especially true in indecent exposure cases. I think that they are embarrassed to talk to me and to admit their urges.

I am completely honest with the victim. I will tell her what the potential problems are down the road. I tell her that she waited too long, that she did not tell anyone, and that she washed the clothing, and the case may not get filed because of these reasons. Short of the other person admitting the crime it is not going anywhere. If he says that they did have sex but that it was consensual it is especially difficult. I have yet to have a case like that that was filed; 100 percent of the time the case has been rejected. Our policy and the policy of DA's office is that in all sexual assaults the DA will do a pre-filing interview. The DA will tell the victim right then and there why the case was not filed.

We try a pretext phone call if the victim is willing to do that and a polygraph of the suspect if he agrees to do that. Those are the two main tools that I would use. Try the pretext first and then call the suspect in and see if he is willing to take a polygraph. If he has a history of any kind I would interview old victims to see if they have anything to share. But if we can't get anything else, more than likely that case would not be filed.

What I would do if I believed the victim, if she seems credible: I will try to get him into custody and use departmental resources—like monitoring his calls—to get him to talk; or pretext phone calls, and explain what the consequences of a rape are. Usually that will get them to talk.

Try to do a pretext phone call. Polygraph test on the suspect. Usually if they did not do anything they are willing to do it since they want to clear their name. Or just present the

case to the DA knowing that it is going to be rejected but it is a sex case and you present it anyway. If you can't unfound and can't make an arrest, the policy is to present it to the DA and get a reject. Sex cases—I would say more than half—get rejected. Often it is due to the delay in disclosure with kids, and also the fact that there are very seldom witnesses.

It breaks my heart when I know that something happened but there is no evidence. But it is out of my hands. There is nothing that I can do in this situation but hand it over to the DA. If the DA rejects, it is my job to tell the victim why the case was rejected. Every victim that I talk to I make sure that they understand that there is a possibility that we won't be able to file. Most are not shocked when the news comes.

My strategies are to talk to people outside of the relationship; find out who she told after, if there was a fresh complaint where the victim was crying or very emotional; and talk to the suspect and find out who on his side can tell me about the victim and the situation. What is the suspect's past? I have a case now involving a registered sex offender who uses the same modus operandi: he meets the woman at a bar and takes them to his house for sex. Everything that happened in that rape that he was convicted for is present in this case. What my victim is telling me is exactly what the victim said in the case for which he was convicted. I will use that in my report involving this victim. I'm also looking for history on my victim: has she done this before, made a false report on someone else? I try to do a pretext phone call in every one of these types of cases. I had one case where the suspect apologized via a text message and we were able to introduce that at trial. Or emails that the suspect sent to the victim.

Try to find witnesses that can give a statement. If it comes down to a straight she said/he said, unless the victim is torn and ripped up, there is no way that the DA is going to file or that a jury is going to convict. And DAs make the ultimate decision.

If you can't find corroboration and you can't impeach it then you can't go anywhere with those cases. Example: I had a very awkward sixteen-year old tomboyish girl and a second girl. Both were runaways and alleged victims. Both were hanging out with a seventeen-year old runaway fugitive from a board and care facility. Both allege he raped them by force. He admits to consensual sex, but says there was no force. There were separate incidents with no witnesses and the physical evidence will say they had sex, but we have no evidence of force and no corroboration. Worse is that both girls have long histories of problem behavior. I haven't presented this to the DA yet but I know they'll reject it. And there's quite a few we get like that where you just can't take it any further. We arrested him because there was exigency in this case; there was an allegation of force, a history of violence, and he turned himself into a drug rehab center. If the facts played out he's a rapist. If there were injuries or physical evidence of force, if we had something to tell us [other than their word]; credibility is an issue in this one because there are too many incidents of the girls being untruthful that the DA's gonna run on this. They have histories of being chronic truants with behavior problems, narcotics abuse, and other issues at home with their parents.

Gather all the facts that I can and present it to the DA. My job is to take her statements and his statements as well and present everything I have to the DA.

It depends on the circumstances. If all I have is he said/she said my last step is to interview the suspect. You may employ a ruse and say you have evidence that you don't. We have these formats. It's a ruse. It is a letter from the Department of Justice saying their DNA was found on the victim. And we use the polygraph. That works well in our cases. It's not admissible in court but it is a good investigative tool. Even if they pass I will tell them they fail. One time a guy passed with flying colors and we said he failed and then he admitted. You try to be innovative, and once you've tried everything, you have to be prepared and think ahead. Often we use pretext phone calls in hopes he will make an incriminating suspect and then when interviewing him you confront him with that evidence.

Almost always there is corroboration, it is about how much you can get. Rarely you see a case where there is none. Fresh complaint witnesses; did the victim go immediately and tell someone? What's often looked at as a he said/she said is not always looked at carefully enough. You've got to go in and you've got to dig deeper. If there is her word against his, you have to do a thorough background of him. Does this seem way out of character or do people look at it and say, you know, he is kind of a pervert and gives me the willies. After doing this legwork chances are the scale is tipping. I make my detectives interrogate the suspect. Within the legal bounds of the criminal justice system, lie to him about physical evidence, witnesses, and tears, and see what he says. If after all of that can you still end up with he said/she said? Yes, then you may close it. I call those [what most detectives do] A, B, C: interview victim, suspect, and then dispo[sition] it. But you need to do a lot more than that. What influences what happens is the laziness of the detective, being overworked, and a supervisor that will let that crap pass their desk. Eighty to 90 percent of suspects will talk, and a lot can weigh into that: when an arrest was made, how the suspect was treated when arrested, and how long it took the detective to get there. You want to get there as soon as possible. The longer he sits in jail and makes phone calls the less likely he is to talk. It's also how well you know the law and when Miranda kicks in. Many detectives and cops don't know it as well as they should. Untrained detectives should not prematurely advise someone of their rights. You have to build the bond you built with victims with suspects as well. If they talk they're going to confess. Sexual assault detectives are generally the best at getting confessions because they don't have smoking guns like in homicide. Good sex detectives will make other detectives look like the F-troop.

Need a suspect cop out or a damaging suspect statement to show as false. I have to trip him up on details if he won't cop out. I hope it's a window where I can recover DNA; if not, a pretext phone call. We can have a relative confront them with a body wire case, or 1108 witnesses, or fresh complaint witnesses. I got a forty-year-old case from 1968 in 2008 where two sisters were raped by a cousin. She wanted to approach him with a tape recorder. She is in her fifties now and she wanted to do it. Unfortunately she was so nervous she forgot to turn on the tape recorder because he apologized and said he knew he had made mistakes. This case is out of statute. I could arrest him but we can't file it.



At the end she was very happy. She was validated. Her mother found out about it, and he apologized to her mother. These were sisters who hadn't spoken in forty years. In these cases you're also looking for prior witnesses. In terms of tools, to interrogate suspect we use a lot of ruses. I have a lot of props ready in case he doesn't cop out. A photo six-pack; a lot of people don't think to use it. Sometimes just a picture of the victim suffices. They feel a need to fill the pause. You have to pull everything you can on those cases otherwise you're not going to get it. Letters of apology from the suspect are phenomenal as long as you can show they weren't coerced. It never fails. They always minimize it.

Those cases are closed on pending status. This was how it was explained to me by the DA's office when I began: if a victim claims she was sexually assaulted and the suspect says it was consensual, we have conflicting statements so we can't get a prosecution based on sufficient evidence so we close it. The case can be opened at any time even though it is closed whereas if we move forward now and he's found innocent then it's over and we can't try it again. If he does it again we can use this earlier case to assist with the newer one. And I've seen that happen. When I was a new detective I had presented a case and it was rejected due to lack of evidence and the DA explained what would normally happen in a case like this and I then passed my information to the victim. Many victims agree and say they will come forward in the future if we hear he has assaulted someone else. This way the suspect is showing a pattern.

I have one that is going to trial. It's a he said/she said. I had no evidence, no witnesses, and no other victims. I interviewed him for two hours and I asked questions in a bunch of different ways. They want notoriety for the things they have done. You pump them up that way, when you ask questions in different ways like forward-to-back and back-and-forward. You have to be an attentive listener, even if it seems far-fetched. If you said that then why are you saying this now? How did you see them? Why were you looking at them? Why were you waiting for them? They get nervous and flustered. I got the guy to make incriminating statements. The formality of the interview makes a difference. This suspect had a prior sex conviction, plus his statements and the pretext. You have to be open to doing everything you possibly can. He declined a polygraph by saying they weren't accurate. You want there to be no doubt.

This section reviewed detectives' investigative strategies specific to clearing sexual assault cases.

The next section focuses on detectives' decision-making regarding the decision to unfound a sexual assault case. Given the FBI criteria to unfound and its practical application specific to the LAPD was covered extensively in Section IV<sup>93</sup> and VII, the focus herein is LASD detectives'

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<sup>93</sup> Section IV was limited to analysis of LAPD's unfounded cases (N = 81) from 2008 because the LASD only unfounded 8 cases that met our sample criteria that year. The frequency of references to the Suspicious Activities, Possible Rape non-crime report within the LASD raises an empirical question: without sufficient oversight and follow up investigation of non-crime reports, how does a process in which victims report sexual assault to the

experiences with unbounding. We began by asking detectives what it takes to unbound a sexual assault.

### ***The Decision to Unbound.***

We have discretion to clear a case as unfounded but we do not do so very often.

When you ascertain a crime hasn't occurred. I can't say it happens more in rape than others.

I have no experience with that.

When the victim indicates in an interview they've made it up, and sometimes we have to interview the victim two and three times; they'll say I made it up and this is why. Of course we can arrest the victim for making a false police report, yes, but do we do it? No. It's hard enough to get a good case filed with them [the DA's office], let alone that. We then write it up. With every case closeout there will be a supplement explaining it. The victim has to recant.

Case active/pending/no further workable/inactive if the victim recants or if the victim is refusing to identify the suspect. If a SART kit is taken and there was DNA we would make the case pending until it has been typed and we can identify the suspect that way. If she doesn't report for a long period of time and there is no SART and no evidence there's nothing else we can do. I can't present a case to the DA with no suspect.

I usually don't do an unfounded. I will still present the case to the DA and if there is no further workable information the DA will reject. You put it on the DA rather than using your own judgment. I had a recent case involving a woman who claimed that she was assaulted by a CHP officer. She made another report for the same thing one month later but things weren't adding up. She was very uncooperative and her behavior during the interview with me was not what I would expect of a sexual assault victim. I just confronted her and she ended up admitting that everything she said was a lie. I pursued a case against her for filing a false report based on all of the resources we wasted on this case. What happens is that we articulate it through writing rather than just giving it a code. The case is coded as 'solved' and 'exceptional.' We have to coddle the victim because her cooperation is the only thing that is going to get the case filed.

In the interview with the victim is there anything in her story that has changed? We re-interview the victim and if there is a possibility that a crime did not occur, I will contact the other party and interview him. Then I submit to the DA and let the DA decide if there

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LASD, deputies write them up as non-crime reports, and they are not necessarily re-classified into a proper crime report differ from unbounding in practical consequence?

is enough evidence. We will still submit the case to the DA, and we will clear exceptionally if the DA rejects for insufficient evidence.

I think only if the victim tells me that it did not happen and that she lied; I would clear a case like that as unfounded.

Even if we feel that it should be unfounded, we still submit it to the DA. We make sure that we inform the DA of the inconsistencies and of our concerns that a crime did not occur. This would be cleared exceptionally because of insufficient evidence. I have never used unfounded. I would not say that it is department policy but we go by whatever code the DA uses. We usually write a supplemental that would go with our case.

I will unfound the case if the victim recants. Example: a child went to a party and said she was kidnapped and raped but it comes out that she just was worried about getting in trouble with her parents. If the victim made it up and admits that she made it up, the case will be unfounded. If the victim does not recant and continues to say that the incident happened, I don't unfound. I would present the case to the DA and let the DA decide whether to file or not.

Unfounded would be where there is no way of finding out who the suspect is, and there is no DNA or no sexual assault kit done on the victim. I have a case now involving a woman who claims that she was assaulted by a taxi driver. She was very drunk and her friends put her in cab but they don't even know what taxi company it was. If there is no DNA or no DNA hit, that case will be unfounded because most likely we will never know who committed the crime. Unfounded means that we cannot confirm or deny that it happened.

I present everything to the DA. The only time I will unfound the case is if the victim is totally uncooperative and won't contact me. If I don't have a victim to present to the DA they are not willing to help me with the case. I have a case now involving a victim who is totally avoiding us. We have called, left messages, sent letters, and knocked on her door; she is totally avoiding us. She waited a long time to report. She said that she could not sleep and keeps reliving the incident, but it's not clear that the incident was non-consensual. She was worried about getting sexually transmitted diseases. I sense that she feels bad about having sex with this guy but I'm not clear that it was rape.

Unfounded means that the allegations are false. He was in prison or in Mexico at the time. But there are many sexual assault cases where I can't say with 100 percent certainty that he did not do it. If I can prove that he did not do it, it would be unfounded. Unfounded, insufficient evidence, no crime; these are the same thing we just call it something different.

Unfounding meaning that no crime occurred? Usually the victim will recant and there won't be evidence to support her allegations, no findings of any type of abuse. If it is a recanted story where the victim said that she made it up to get attention or for some other

reason, it would be cleared as no crime. Unfounded is used very rarely. Instead we clear other meaning that no crime occurred.

That would be a case closed as other/no crime occurred. We have to be very careful about this in sexual assault cases. I have had two cases where the victim was mentally unstable and both came forward and said that they had made the whole thing up. When you are talking to a victim, based on your experience, you can tell whether they are telling the truth or not. I've had other cases where I was very suspicious that it did not happen, or it did not happen in the way that the victim said. We present it to the DA. The DA will always call the victim in and listen to her story and then based on x, y, and z will probably reject it. We have to be very careful with sexual assault victims and understand that things happen to people; they make bad choices. When someone comes in, I treat them like I would want my daughters to be treated. If I see a red flag I am very honest with the victim that this is the problem with this case and 99 percent of the time the DA will feel the same way. At the same time, we don't want someone to be arrested for sexual assault if it did not happen. That is a huge charge; it's not like being charged with stealing a hamburger. That is why we are so careful to do a thorough investigation before we make an arrest.

It usually stems from a religious background and they feel guilty about their conduct so they tell their parents they're raped as opposed to talking about sex. Other times it has to do with integrity. If a person feels they engaged improperly in conduct they will falsely allege force.

If the victim changes her statement and says it did not happen it could be unfounded. If the victim is being threatened that is tough because without the victim there is really no way to prove that the crime did occur. We would present the case to the DA and let the DA make the decision. It's the same as in a DV situation when the victim has obviously been battered and opts to not get a protective order. I can put one in place without her consent.

First, if the victim says she lied and it never happened. Often we have to see if the elements of the crime of rape are satisfied. If not, then no crime occurred. For instance, if a victim alleges she was raped and later we find out it was consensual and they were of age then no violation of law occurred.

It is rare in sexual assault unless she recants and the recantation is believable. A good detective should examine the recant to ascertain the reason. Other than that, I made it up are not very many. We have a small percentage that way. If a victim says it happened it should never be closed as unfounded.

There should not be many unfounded cases. It should be well under 10 percent. In my experience the ones we know or expect are not true are maybe two to four percent. I don't deal with adult rapes, but I think the numbers would be higher with adult women. Most children are not going to put themselves through that. But adults are a little more mercenary and will make false reports. When I was still in patrol you got a case where

you would get sour grapes and business disputes,<sup>94</sup> or sometimes someone has cheated on a spouse and they say rape.

The ones I've cleared no crime it is very obvious there was no criminal conduct. It starts with the victim, that they lied.

We then asked detectives whether victims have to recant their testimony in order to be able to unfound a case. Aside from one detective who stated "I have no experience with that" and another who stated "In some cases, but that's not always the case," the remaining detectives provided more concrete answers. Below are the two other exceptions to the larger trend of detectives correctly stated that recanting is not required to unfound a case:

Victim recanting is required, unless I have overwhelming evidence to disprove her statement.

The victim does have to recant her testimony to clear as no crime.

However, another pattern emerged that was also consistent with the responses of some LAPD detectives: many noted that if there is any question about whether the victim is telling the truth they prefer to take the case to the DA for a reject under the erroneous impression that allows them to clear the case by exceptional means, which suggests that detectives require training on case closure criteria. Also notable are the references to a lack of victim cooperation as a rationale to clear a case exceptionally if a victim recants.

A recant will not lead to unbounding. If the victim lies we clear it as victim uncooperative or insufficient evidence, but it is not unfounded.

If the victim in this case recants, the case will be closed as unfounded. I would not present it to the DA. But if there is evidence that the victim is being threatened or intimidated I would definitely present the case to the DA. If there are injuries and if the victim made a fresh complaint, if we have all of that kind of evidence we will go forward with it. In a situation like that, I think that the DA would still put it before the jury,

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<sup>94</sup> This refers to when sexworkers report a rape to the police when a John refuses to pay after sex occurs for an agreed upon price.

especially if it was a violent act and there are witnesses that can corroborate the victim's original testimony.

It depends on where the case is in the investigation. If it is already filed, we would not do anything because our case is already closed. If it has not yet been presented to the DA's office, I would investigate to find out why the victim is saying something different now than the he said/she said from before. I would present it to the DA's office, putting in details about the recantation and ultimately it would be a DA reject because the DA will not go forward with a victim who is recanting. The exception is if there is evidence to prove that the crime did in fact occur. We would probably go forward with that and let the victim recant on the stand.

If the victim recants but the evidence showed it did occur then more than likely it will be closed as victim is uncooperative. Or we can present it to the DA's office and see if the DA will file charges or not. They most likely will reject it as victim uncooperative.

An exception to this is evident below. The detective states that victims may recant or back step during the investigation because *that is what they think the detective wants*:

Not necessarily. I've had that before where victims recant but I still pursue because I don't want her to tell me that because I think it is something they think I want to hear. I don't want them to think they're not believed. Before I make a final determination I need corroboration. For example, I had an Asian woman at College of the Canyons who said when she was walking to her car and someone followed her and sexually assaulted her inside of her car wearing a ski mask. I had her show me the path directly from her classroom out to the car where she walked. Prior to talking with her I got her schedule and found out she had not been in class for one week. When I met with her I confronted her about the inconsistencies and said she wanted her parents to let her leave the school and return to Japan. She alleged the jacket was torn off her so it wasn't good enough for me. I needed some corroborating evidence. The DA filed a charge against the victim for filing a false police reports. My upper echelon at my station wanted to file the charge against her. I didn't want to file the case. She was a sweet girl. We did it with the arrangement that she would only get probation.

Recanting is not required. If my investigation reveals that it did not happen then she does not necessarily have to recant.

No. Many times we find that the facts don't align, and not only in relation to physical evidence. For example, with the party situations, while not necessarily witnessing the alleged act but when asking about conduct before and after; those are the kinds of things when confronting a victim you feel badly about. They don't necessarily recant but the facts don't align.

When I've had those it's an issue with the mom's boyfriend and teen girls. It's usually a noncontact offense like he's looking or leering at me, or a child annoy-type case. They're not criminal things but meet the criteria for annoying a child. I've had three of those and I knew they were false because they couldn't give any details that a real victim usually can. They later recanted.

Not necessarily. I have found victims who think they might be a victim because of what they perceive and once they relay the story and the totality of the story it does not meet the victim's description. Then you don't have that crime.

We use a lot of investigative tools such as pretext phone calls and polygraphs. We can't put all of our eggs in one basket with a polygraph, but I had one case where a little girl said something but it made the teacher initiate a SCAR<sup>95</sup> and the father denied it. When I interviewed him he passed the polygraph. The little girl was unable to articulate anything and I cleared that no crime. If DNA cleared someone I would imagine that would be a reason why one would clear it no crime. If the victim disappears: I had one where I had it open for over a year and I looked for her forever, sent letters and so on and I finally closed it noncriminal when she never returned. I didn't even have a suspect.

We then asked whether there are any particular types of cases that have a higher likelihood of being unfounded:

It's a case-by-case scenario; for example, a date situation where two parties had intercourse and the female felt because she told him no and he continued that it was rape. The elements were not filled: force, fear, or duress, even though she might have felt she was raped. She went along with it so the person wouldn't get mad. There is nothing there to support the elements of the crime.

A case involving a victim who went to a party, got drunk, had consensual sex and then claimed that she had been sexually assaulted. That case would be cleared by exception, no crime.

When victims are unable to be located or are not cooperative. When you see they aren't cooperative in initial report, they're 99 percent not going to be cooperative with you.

Alcohol and drugs and date-type ones have turned out not to happen in the way they explained. I've gone as far as going ahead to write a warrant to search the house and found a video where she was dancing with the suspect. And she was missing for two days and her boyfriend was wondering where she was. She recanted after we confronted her and it didn't turn out to be kidnapping; she said that it was an ex-boyfriend. We have to do due diligence to collect evidence. So we have to sometimes go ahead and investigate further. Sometimes they get cleared out as no crime occurred when they state they were angry and got into arguments. A good portion of us know when you have a true victim most of the time.

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<sup>95</sup> Suspected Child Abuse Report

A lot of times allegations of physical abuse turn out to be reasonable discipline or an accident. Patrol deputies are trained to document injuries in a police report. I think a lot of times they could screen the cases better and we wouldn't have to get them. Often they jump the gun to cover themselves and make a report and often those cases get closed as accidents, discipline, etc. Rarely have I seen a sexual abuse closed as no crime. [Pauses thinking] I have not ever had an unfounded case. I have had ones that seem like they aren't true but after investigating I realize they are. For example, a teenager lived with her mother and her mother's boyfriend and she reported he would look at her in a weird way and stare at her breasts. They wrote a crime report of annoying or molesting a child under eighteen. My sergeant, when he assigned the case to me, said this appears to be no crime. The victim stated she would wake up in the middle of the night and her pants would be down. After interviewing her I found out that he would go in her bedroom and pull down her pants and he would touch her vagina. From the one report, one sentence told me it required further investigation.

With teenagers it relates to parental influence or their image. Also they are looked at differently. A lot of detectives will say 'Crap, another teenage rape.' I tell them that if they're so sure she's lying to arrest the teenager and they never do. I told other sergeants to confront detectives the same way and it led to detectives not saying such prejudging statements about victims. Victims say a lot about detectives and patrol officers making comments about how they dress and if they're drinking.

Teenagers, for very minor offenses; especially if they have a history of running away. The girl goes out on Friday and doesn't show up home until Sunday and tells mom she was kidnapped and held against her will and yet there is no trauma or DNA. Most victims don't say anything like that, and when they do it it's in a different context.

We then asked detectives to provide a specific example of a case that was unfounded and explain why it was unfounded. Those who had not previously offered examples provided the below responses, and the remainder stated they did not have enough experience to answer:

I had a case where a girl said she was raped on the side of the freeway. She had the vehicle and suspect information and said they shoved rocks in her vagina. They did a SART on her. Obviously I was bothered by this crime and if women are getting raped on the side of the freeway we have to catch this person but in reviewing everything things just weren't adding up. I spoke with her boyfriend and something was amiss so on the third time I went to interview her she finally broke down and told me she made up the entire story. In that case it was cleared out no crime. The DA filed on her for filing a false police report. She stated she wanted attention from her boyfriend to test his love and she admitted to me, her exact words were, 'I am really screwed.' Also, sometimes with party rapes and the girl is blacked out and doesn't know exactly what happened, those are written as Suspicious Circumstances, Possible Rape.



Alleged victim and alleged suspect went to a secluded area and had sexual intercourse in the past on a number of occasions. Both the victim and suspect admit all of this, but on this particular night the victim says she was raped but subsequently withdrew her statement of being raped and said that it is a dating relationship and no crime occurred. I come to find out that she was upset because she got stickers in her behind. I can't present the case to the DA; well, I could, but it would be a reject. I wouldn't make an arrest in this case, because I submitted the case to the DA and she rejected it. Actually that was a cleared other. Recanting doesn't make a difference. They all recant. In twenty-six years I have not had an actual rape where someone did not put themselves in a bad position.

A girl said that she had met a friend at a restaurant, they were drinking, and she blacked out and woke up to them having sex in the back of his car. She blacked out again. She has flashbacks of being hit, forced to get out of her car, forced back in car, and driven home.

I had a case last year where a woman was claiming that she was raped by different people all over the South Bay. She called the Daily Breeze and complained that I was not working the case fast enough. We did three sexual assault kits on her. I've been trying to explain to her that I have done everything I can, but there is nothing else to do unless we get a CODIS hit.

Considered together, the findings from interviews with a sample of LASD detectives suggest that—consistent with the findings from the sample of LAPD detectives who were interviewed—their decision-making in terms of how to investigate and clear cases are primarily shaped by: (1) their misunderstanding of the FBI criteria to solve/clear and unfound cases for Uniform Crime Reporting purposes; and (2) whether their approach to victims is “innocent until proven guilty” or “guilty until proven innocent.” The global considerations and policy implications of these important issues are addressed in Section XI.

## **HOW TO DECREASE DIFFICULTIES FOR VICTIMS WHEN REPORTING**

Finally, we asked detectives how to improve the quality of sexual assault investigations and prosecutions. The most frequent responses were to have the LASD's sole specialized sexual assault unit—Special Victims Bureau—investigate all sexual assaults and not just those involving victims under eighteen, a more clarified and efficient DNA policy and process, and

more training in interview and interrogation skills. Special Victims Bureau was repeatedly cited throughout interviews as the “gold standard” for sexual assault investigations in contrast to the station level where detectives receive very limited training specific to sexual assault, and they investigate whatever type of crime report is sent their way.

All sex crimes should fall under Special Victims Bureau. All rapes need to be in the hands of detectives who want to deal with these cases. You might have a good detective at a station that is going to a sergeant [for supervision] that deals with burglaries and robberies, but our sergeants, lieutenants, and captain understand the dynamics better. I can't control the DA's office, but we can control how we do things here at LASD. DAs will say ‘Why don't you [Special Victims Bureau] take the [adult] rape cases as well?’ We need to increase training across the board on interviewing. Cops don't get enough training on interviewing, and not just suspects, but on understanding victims. We send them to interrogation to interview suspects, but there's not enough in terms of how to deal with rape victims. Specialized units are the answer. In a specialized unit the first year you will be drowning, the second year you will start doing the dog paddle, and the third year you're swimming laps.

More investigators and a specialized unit for adult sexual assault. We really do need to specialize in these cases. It would be beneficial to the people we serve if we had a specialized unit for all types of sexual assaults. Training is needed to investigate these types of crimes. All law enforcement agencies should have specialized training, if not a specialized unit. We have too many cases and therefore we are forced to triage the cases. We don't need toys and we don't need candy. We need people so that we can give each case the attention that it deserves. We can't do that if we don't have enough personnel.

To be able to process our sexual assault kits more quickly so that we can get DNA results that will exclude innocent parties or lead to an identification of a suspect. They should establish a unit similar to Special Victims that just handles adult rapes. Right now they are at the station level and we are handling lots of different types of crimes. If I had an assignment that focused just on sexual assault I would have more time to do a solid investigation. Not to say that we don't do a good job now, but we can't give one hundred percent given the current situation.

Training for detectives. When I got this assignment I did not receive any training and had to learn from other detectives. I did not even know how to package the sexual assault kits or where to bring them; I had to learn this all on my own. Getting DNA more quickly would really help. I think that it takes five to six months to get the results. I have had cases go forward without it being ready but the DA will extend the date for case completion until it is ready.

More training classes as far as interviewing goes. We can never have enough training. And a specialized unit to work adult sexual assault; since it is specialized that is what you

deal with all of the time and you can have someone in the same office that you can talk to about the case. It helps to have a bigger pool of support that you can talk to about strategies.

I've never been a station detective but we have a policy that we interview everyone in person, but the station level goes by the initial report from the deputy. We have more resources available to us. They have the same, but we have them quicker such as the polygraph, sexual assault exams, and the crime lab, and we have more pull to get things done quicker. Patrol station detectives deal with all types of crimes, not just sexual assault. We have more advantages [at Special Victims Bureau relative to station detectives] because we get sent to more trainings and our investigations are more thorough.

A fresh complaint or reporting immediately helps a lot. A quality first report with a quality patrol officer building the foundation a detective can work off. Not prejudging the case because of how the woman was dressed or the circumstances of how the assault took place. A prompt sexual assault exam and getting the victim treated immediately with quality personnel that get the ball rolling without all of the blame and other issues that can go along with sexual assault is key to a good investigation.

Early intervention by detectives. Before we had E-scars<sup>96</sup> we had DCFS going out there contacting suspects and they got all kinds of information before we even got to them. Patrol: sometimes they do a good job and others they don't. With early intervention they can call us if they want advice, but they don't have to. Or mandatory consults. Maybe detectives should roll out. They will go out and arrest on cases where they shouldn't have made an arrest when we need time to do the pretext, and you can't do that in a day. With the suspect in custody you don't have the time. We need more and better cooperation between the police and DCFS. We have a lot of complaints about them screwing up criminal cases because they have a thirty day mandate to clear cases and we can keep cases open as long as we want. Our administration doesn't like it, but as long as there is a reason we can do it. Sometimes with time the suspect will be more likely to fall for a pretext.

We have many resources, it's just utilizing them to the best of our ability and knowing what resources are out there. When we are mapping out a suspect's location we use Google maps to get a satellite view. In Britain, for instance, they have surveillance on their streets; the light posts have cameras. Although some people say they don't like being watched, the only people who really don't like that have a criminal mind. If you have nothing to fear or hide you would look at it as somebody is looking out for me. If we had that resource here it would be better. I know in LA County we do, but if we had more on residential and busy streets that would be invaluable. It's a shame that you have to put society on a babysitting program such as that but there are those of us who can't monitor ourselves. We share information with LAPD. We have a shared networking system to view other agencies' reports, and we have DNA available to us. It's just a matter of things being processed in a timely manner.

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<sup>96</sup> Electronic Suspected Child Abuse Reports

The crime lab needs to analyze evidence immediately, and more detectives. We should have teams working on one case. That's helpful because people think differently. One person's mind may think one way and overlook things. I think working in teams is good for interviews and evidence retrieval. I'm the type of person who would enjoy having another person in case I overlooked something.

It would be great to have another detective working these cases with me. It's important to have another detective working the case with you so you can relieve stress and have someone to bounce ideas off. The department is already testing every sexual assault kit. I think they are wasting a lot of money. I had to do an audit of every case from 1999 through the present and after going through the majority of cases I didn't find one instance where the detective who handled the case had made a mistake and because of that I now get all of the DNA returns. In 100 percent of the cases so far the identity of the suspect was never in question from the beginning. They've wasted all of this money when he was interviewed and the case was submitted to the DA.

We've started with all who get arrested by making every arrestee having to submit DNA. I think that will help tremendously. Cameras on every street. More education to especially females; if you're going to hang out and go clubbing make sure you do it with more than one person. Most of our problems are people who put themselves in a bad position to begin with from my experience.

Additional personnel all around and in the crime lab so we get results more expeditiously. And current technology; we'll see other agencies that will have evidence collection things that make ours seem outdated. We're still using the MBT box but the police have laptops. And we need more personnel to work the cold cases.

We need the DNA analyzed much more quickly. If I have a rape victim, she may be cooperative at first but not as the case drags on. DNA is huge. I had a very, very brutal rape involving two offenders who raped the victim at gunpoint. She ended up identifying someone within three months and the suspect failed a polygraph. But the victim was a little bit flaky and some of what she was telling us did not make sense and we really needed the DNA to clarify what happened. I just got the results back and that was a December of 2009 case. There were no findings of male DNA either vaginally or rectally. There was DNA from three males on her neck but none matched the suspect I had in custody initially. The DA had rejected the case after the arrest until the DNA came back. It is important to make an arrest because it stays on their criminal history. If he comes to the attention of law enforcement at some later point in time, you can see that he was arrested for something similar. Also under California law now, anyone arrested for a felony is required to give his or her DNA. That's another reason for arresting the suspect if there is probable cause: to get their DNA into the database.

We need specific teams for certain crimes so, for sexual assault, crime scene units that would be readily available. The big thing is the time of reporting. It can either make your

case or wipe it out. I think that our department does a good job. We have good crime analysts.

More people to investigate the crimes. Our caseload is enormous and you are spread so thin. You're working on one case and then two to three more come in and that makes it difficult.

We have a very high caseload so it limits what we can do with any particular case. There are so many cases and too few of us. I have between thirty and forty cases at any one time. There is another female detective and we handle all of the cases. Even if the case is assigned to a male detective there is always a female detective present. They push to try to have a female involved one way or another. It seems to help the victim.

We need more detectives because the caseload is high and we cannot dedicate an adequate amount of time to each case. With DNA it takes about three months before they actually start working on your case. It would be good if we were able to get sexual assault kits tested right away.

I personally think that now that we are trying to get the sexual assault kits processed more quickly, we are doing what we should be doing. But I think that the Sheriff's department does a good job. The crime lab is great. If we do make an arrest, we need the tox screen and they are very good at getting those results to me quickly. With sex crimes we are on the money.

I don't think LASD could do much more to afford us a better environment or more time. We have everything we need. If there is a place where progress could be made it would be the DA's office by assigning special DAs to these types of cases. VIP is a façade. We only have one DA [at the local branch], but the problem is there's only one of her and eight of us that work one hundred cases each per year. [A DA] can't handle seven hundred cases per year. S/he does everything within the office's means. The big problem is the burden of proof and to surmount that is tough. I don't know what more can be done. The DA is hard pressed with time and resources. Our filing VIP DA, I think s/he files everything s/he can possibly file. And they've helped us some. Over the years it used to be an uncorroborated child case without a confession or physical evidence would not get filed. We've come a long way now. We use victim testimony and suspect behavior. An investigator changed that with the Head DA. They said if you can successfully prosecute one of those we'll change that policy. That was 1989/1990. That helped us with smaller kids because the earlier policy gave us a challenge to be able to qualify these victims for interviewing. The DA's office has come a long way but with the rape cases of teens I honestly don't know, using our burden of proof. I'll use the DA as the scapegoat because they have serious issues with number of cases they are trying.

If we could send our lab results and speed up the process of getting DNA results back. It now takes months. When you have a case where there is not a named suspect and no charges pending they outsource those and it takes months to get the results back. If we had our own unit that handled sexual assault, a Special Victims Unit for adults. We are

not case specific and if we had a unit they would become really savvy and know the ins and outs of how to handle those kinds of cases.

Give us more detectives so we could give each case the attention it deserves. If I close two cases I get three the next day. I'm not saying we shortcut them, but we have to prioritize them. And with no overtime we are limited to what we can do. We are doing more with less all of the time. More investigators and better budget then I think there would be more arrests, definitely. But I think we do a good job with what we have.

More detectives to handle all cases throughout the department and throughout law enforcement.

I would think more surveillance and that's not always possible. There are some where I use every resource available. Maybe more overtime to be able to complete your work because the day will run out and you can't do it for free because then you make other detectives look like they're not working hard enough. More DA's; my cases will sit there a long time awaiting review.

### **CONCLUSION: LASD DETECTIVE INTERVIEWS**

Considered together, LAPD and LASD detective interviews described both micro and macro forces that impact the extent to which sexual assault gets investigated and how case attrition occurs. On the micro level, findings from LASD detective interviews were largely consistent with the findings from LAPD detective interviews in terms of the presence of two approaches to rape victims among law enforcement: "innocent until proven guilty" and "guilty until proven innocent." The innocent until proven guilty approach is characterized by: (1) a passion for working sex crimes; (2) engaging the victim as an ally in the investigation; (3) expecting victim inconsistencies based partially on extant law enforcement protocols and trauma-related factors; (4) assertions that false reports are rare; (5) knowledge of the dynamics related to delayed reporting; (5) an emphasis that cases involving alcohol, drugs, or prior/initially consensual sex are just as serious and occur with alarming more frequency than stranger rape;

and (6) frustration that departmental leadership do not take sexual assault as seriously as homicide.<sup>97</sup>

In contrast, the guilty until proven innocent approach is characterized by: (1) an emphasis that stranger rape is the only “real” rape; (2) a belief that nonstranger sexual assault is not as serious as stranger rape and is often the victim’s fault; (3) statements that any victim inconsistency ruins their credibility without consideration of how law enforcement’s information-gathering processes and report writing often foster inconsistencies that inappropriately get attributed to victims; (4) an emphasis on the ubiquity of false reporting and victims’ lack of cooperation; (5) responses to interview questions based on the “righteousness” of the victim; (6) anywhere from reluctance to unwillingness to arrest in “he said/she said” cases.

The macro level findings are also consistent with the findings from LAPD detective interviews specific to the pre-arrest charge evaluation of nonstranger sexual assault cases at the district attorney’s office. In and of itself, collaboration between law enforcement and prosecutors *in service of a thorough investigation* is not problematic. However, taking a case to the DA *for a reject* where probable cause exists to arrest but the detective abstains from making the arrest due to stereotypes or misconceptions about the reality of nonstranger sexual assault is problematic for two reasons: (1) for FBI purposes law enforcement cannot count cases as cleared/solved when: probable cause to arrest the suspect *does not* exist, or where probable cause *does* exist but law enforcement refrains out of personal preference rather than for a reason beyond their control; (2) when utilized as a way to dispose of nonstranger cases, the pre-arrest charge evaluation process conflates probable cause and proof beyond a reasonable doubt; and it decreases the

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<sup>97</sup> Frustration with department leadership with regards to the sexual assault/homicide hierarchy was more prevalent among detectives in the LAPD than the LASD.

likelihood that nonstranger sexual assault suspects will be arrested and prosecuted. Both the micro and macro policy implications are addressed in further detail in Section XI.



## **SECTION IX**

### **INTERVIEWS WITH DEPUTY DISTRICT ATTORNEYS FROM THE VICTIM IMPACT PROGRAM (VIP), SEX CRIMES, & FAMILY VIOLENCE DIVISIONS AT THE LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE**

Unless you change the mores of this country it is going to be so difficult to convict in date rapes in this country. If a girl has twelve shots of tequila and passes out it's ok [to rape her] if he [the suspect] just says she wanted it.

--VIP Deputy in Charge

#### **PROFILE OF PARTICIPANTS**

Since 2001,<sup>98</sup> the Los Angeles County District Attorney's office has a specialized sex crimes unit that vertically prosecutes sexual assault called the Victim Impact Program. The DA's office describes<sup>99</sup> VIP as:

“designed to specifically address the needs of victims with unique vulnerability. These crimes include those committed against the elderly and children, hate crimes, and crimes of sexual abuse, stalking and domestic violence. The goal of the program is to obtain justice and support for these victims throughout Los Angeles County and to hold offenders accountable for their crimes. To accomplish this goal, the District Attorney's Office has doubled the number of highly trained and qualified prosecutors in Branch and Area offices across the county who will vertically prosecute the targeted crimes. Law enforcement officers investigating and filing these cases deal directly with local VIP coordinators and work with deputy district attorneys who will handle each case from start to finish.”

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<sup>98</sup> The program represents a firm commitment by the District Attorney's Office for trained and qualified deputies to prosecute crimes against individuals who often target victims because of an individual's vulnerability. The goal of the program is to obtain justice for victims while holding offenders justly accountable for their criminal acts. In 2006, a review of the program was conducted in which data was analyzed in order to make an assessment as to whether VIP had met the goal of justice for victims and just accountability for offenders. The analysis included both qualitative measures and quantitative data; the results clearly demonstrated that this goal was being achieved but that much work remained to be done. Recommendations to further improve program results were identified in this program review. Chief among these was a recommendation to move towards a VIP Team approach in all Branches. This recommendation was implemented in stages and fully completed in 2008. Each of the eleven Branches has designated an experienced deputy to act as the VIP Deputy-in-Charge (DIC). The VIP DIC works closely with the assigned deputies of their VIP Team to ensure that all cases are appropriately prepared and prosecuted. All deputies assigned to a VIP Team receive enhanced, on-going training designed to cover updated legal issues, potential defenses and trial tactics. In 2009, the VIP Working Group was formed to further enhance the capacity of the VIP Teams to effectively pursue justice in VIP cases (Personal Communication, M. Daniels, Head Deputy, Family Violence Division, August 2, 2011).

<sup>99</sup> [http://file.lacounty.gov/lasd/cms1\\_145173.pdf](http://file.lacounty.gov/lasd/cms1_145173.pdf)

We interviewed 30 deputy district attorneys (DDAs) at twelve courthouses and office locations whose caseloads, considered together, reflect a diverse majority of the citizens and sexual assault cases that come to the attention of the criminal justice system in Los Angeles County. We also spoke with a few DDAs from the Family Violence Division of the District Attorney's Office because they prosecute intimate partner sexual assault, but it was not uncommon for more senior DDAs to have experience working in both the Family Violence Division and the Victim Impact Program. DDA interviewees had anywhere from 3 to 23 years of experience as a prosecutor; the range of experience prosecuting sex crimes in particular ranged from 1 to 23 years. All interviewees stated that specialized training is fundamental to work sex crimes. They most frequently cited in-house trainings put on by the DA's office as well as seminars offered by the National District Attorney's Association as the basis of their training to work sex crimes. The majority of interviewees, as evidenced in the below statement, stated that they requested the assignment because they want to make a difference:

These are the only cases that I want to do. I watched senior lawyers doing these cases. These are the most vulnerable victims and we get to seek true justice for people's lives who are affected forever.

A number of interviewees stated that although they reluctantly accepted a request from a supervisor to join a VIP unit, sex crimes are now the only cases they want to work:

I was asked by the Head Deputy to join the VIP team. I didn't want to at the time and s/he said it was a minimum two-year commitment. The reason I didn't want to at that time was because I really didn't like the domestic violence cases. You have reluctant victims; the victim hates you, the defendant hates you, all are against you, and you're fighting for someone who doesn't want to be fought for. Almost all of my cases now are sex crimes. The only DV-related one I have the suspect beat up his wife—he was sleeping with her twelve-year-old daughter.

The following sections describe the findings from interviews with DDAs specific to working with sexual assault victims, working with law enforcement, and the factors that impact

filing decisions. This section concludes with deputy district attorneys' ideas about how to increase the successful prosecution of sexual assault within the criminal justice system.

## **WORKING WITH SEXUAL ASSAULT VICTIMS**

For the most part they are so ashamed and they blame themselves. They say what could I have done better? What portion is my fault? Once they realize it's not their fault it may help them. It's difficult to get up in front of strangers and explain what happened, and to have the SART exam. All around it is a horrible process to go through. Most people are uncomfortable talking about sex when it's husband/wife consent, etc., so when it's a violation of the personal it's even worse.<sup>100</sup>

There are only so many people to do so much work and it's a long, slow process for victims. And they're taking that on and they just want to put it out of their minds and you're a constant reminder of it when you call. The biggest challenge for victims is definitely the idea of having to tell someone that you don't know about something that happened to you that is sexual in nature. People don't like talking about sex at all, let alone unwanted sex, let alone with a stranger asking about what went where and those types of questions. Chances are no matter how credible this person is, if we have nothing else to work with then it probably won't go anywhere. The biggest challenge for victims is to be told we believe you, we believe this happened, but unfortunately we can't file these cases.

### **Challenges for Victims when Reporting**

Interviewees stated that the primary difficulty faced by victims when reporting a sexual assault is the criminal justice system itself; specifically, being believed by law enforcement and prosecutors, and the procedural requirements such as the multiple interviews and testifying in front of the defendant that are necessary to successfully prosecute. Many noted that specialized training is critical for criminal justice personnel who work with these types of victims and cases, and, when lacking, makes already difficult cases impossible to prosecute. For instance, a deputy district attorney stated, "Educating initial responding officers is important because they don't always know what kinds of questions to ask. One officer asked the victim whether she had an

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<sup>100</sup> Unless otherwise noted the quote comes from either a Sex Crimes, VIP, or Family Violence deputy district attorney.

orgasm, which I found very offensive.” Another stated, “I don’t see why there would be an obstacle to reporting a crime. I know that psychologically there may be obstacles like fear or shame of being judged because maybe they’re a barmaid or prostitute. But in our culture in this day and age, at least with LASD, they’re open; they’ll investigate, even if the case is seemingly weak. They’ll go and put effort and investigate. Even if I reject a case because it is so weak, they will still be there for the victim.”

Others commented that the biggest challenge for victims is “The fact that they are doubted and scrutinized and questioned in a way you’re not prepared for in normal life. It is never flattering.” Similarly, another answered, “Everything that happens once you report it. People have no idea about what’s going to happen. People do not understand the system is not set up to streamline the process. You’re dragged to patrol, to the detective, to the SART exam, to the DA’s office. You have no control.” Reiterating the issue of believability, a prosecutor stated, “Probably the most difficult thing is they want to be believed and they want someone to believe in their case. The process is long and they are attacked sometimes by the defense. They are made to look like bad people who asked for what happened to them.” Other challenges noted by prosecutors include: “Talking about it with multiple people; the SART exam is not a pleasant thing; the risk that a case is not going to be filed even though you made a report; being grilled over and over again.” Another interviewee emphasized that, “It is not pretty. Regardless of the victim’s age, it is difficult. The suspect gets a lawyer. If he gets a good one it makes a difference. As a victim you may find there isn’t enough evidence. With drug cases it is gone; sleeping overnight and reporting it the next day it is too late. Sometimes we are pretty certain based on the description that they were drugged but you cannot prove it. So they are disappointed. But that’s nothing compared to if we file. If we file, you’re in it, and that means you’ve been through

several interviews, an exam, you have to testify at prelim,<sup>101</sup> you have to testify at trial, and it is very stressful. They have to relive it and brace themselves for cross-examination, which often involves mocking. They get called names and a lot of women choose not to do it.”

Another challenge for victims, according to prosecutors, is the slow pace of the court process. For instance, an interviewee stated:

The main problem is the length of time it takes to endure the process. If it goes to trial it could take over one year and that is some of the faster cases. The suspect has the right to a preliminary hearing within ten days, but it seldom happens within that timeframe. When there is a lack of information it is impossible to get to victims. Marsy’s law provides for sending more information to victims but victims sometimes do not like that as it can be re-traumatizing. And depending on the type of case there can be pressures from within families. For example, today I had a fifty-year old woman told by her seventy-year old father to ‘stop causing trouble and to just forget about it.’ There she was, blamed again.

Emphasizing believability and shame, other DDAs stated:

People don’t believe them. They’re accused of being at fault. Teens say they didn’t report because mom doesn’t believe them and still doesn’t. There is a lack of support at home. These people [suspects] approach victims with low self-esteem. These kids do not have that, and that translates into adult relationships. They choose men who are not their advocates, because they were not raised in homes where parents, siblings, and friends teach them to put themselves first and to not let people disrespect them. We [the deputy district attorney and their peer group] look out for each other at bars, and while being out. These victims more often than not do not have a core group of people. Predators see that they have no friends with them and take advantage of that. They don’t report because of that.

With both the physical as well as the sexual, people do not assault children and partners in public with witnesses. It is always a private and secret thing. Often it is hard to prosecute because people will say it is only circumstantial evidence, so for prosecutors especially, these are difficult. You have to mine your case for nuanced details to build a case. People don’t always have the time because it’s a one-on-one, but if you search and search and search you will find something. Witnesses in family situations will not come to court. They find it difficult so therefore ‘Suzy must be lying,’ etc. It’s different with strangers but when it’s your daughter and your boyfriend is doing it to your daughter you

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<sup>101</sup> Preliminary hearing

think your daughter is lying because she does not like your boyfriend. People do not want to come to court because the defendant is related to them and they think the victim must have some agenda.

Given these challenges, some prosecutors emphasized the importance of victims' advocates:

“Victim advocates [help to overcome the challenges]. One of the good things about the process for the victim is they get to tell their story and have other people believe them and reach out to them. I always use the victim advocates.” Echoing the need for supplemental support of victims in these types of cases, another interviewee stated, “Even for adults it’s a trying process. You can get them to prelim, but going through it at trial is a difficult psychological process for them. Handholding is a critical part of this.” Finally, an interviewee stated a need for victims to utilize the services that are available to them:

Counseling, mental health services, and relocation services are often underused. Victims do not want to take part in it. I am not a fan of psychiatry but this is about having someone neutral to talk about it and listen to you and not judge. Many victims do not have this as an outlet and pushing it aside and not dealing with it is not good for them. Victims need to know the services are available and critically important.

In summary, prosecutors stated that the biggest challenges for victims are the shame and self-blame that often accompanies sexual victimization, and that first responders can be a big challenge for victims depending on their level of professionalism. We then asked interviewees how they assess victim credibility based on their training and experience.

### **Assessing Victim Credibility**

I look at every statement previously given and every action taken all the way through my interview and ask different questions of the victim. We have to look for motive. People lie all of the time, people lie about sex crimes, and we need to see all circumstances. I look at defendants' prior conduct in terms of victims' credibility. If this is a person who repeatedly preys on the victim; I mean arrests and convictions. I explain to jurors that no two victims will act the same way. It is important for jurors to understand because they think a victim should be a certain way. People expect the victim to be sobbing. Some will smile out of nervous habit, and some will be straight-faced, which can work against them. I look for corroborating evidence. Victims may rely on the

crutch of ‘I don’t remember,’ [which is the] same thing you might get from a suspect when they say something and then are presented with evidence that tells another story. If something does not make sense to you then it will not make sense to a defense attorney. The pre-filing interview must be done from the perspective of a defense attorney to try and fill those holes before we get to her explaining what happened.

The two most prominent—and often overlapping—means through which prosecutors interviewed during this study reported ascertaining victim credibility are “gut feelings” and the consistency in the victim’s account of what happened. Closely associated with consistency is the victim’s demeanor, which interviewees described as critical in relation to the totality of evidence. As one prosecutor noted, “By the time they get here we have weeded out cases in which people might be lying. The majority of cases where I have found out they were lying, they are very few and most often teenagers. Or they involve mentally ill victims. I look at the evidence and make that evaluation and I will not put them through that when I know there is no chance ever it will work with a jury.” The following examples are representative of the “gut feeling” approach to determining victim credibility:

A lot of it is a hunch. Any DA in any unit has to rely on their intuition and common sense, and the better DAs are probably those who do that more. If things don’t make sense, I challenge victims in the way that the defense will. Things I think a jury would want to know and the defense would attack. If they explain that satisfactorily then I believe them.

Inconsistencies. Not so much those, but more gaping holes where they can’t answer questions. Or the more you talk the more information comes out. Office policy is a pre-filing interview before filing charges to evaluate their credibility. You talk to so many people that you start to see from their responses and demeanor whether they’re credible. It’s mostly a feeling you get. For example, [citing an earlier case where the victims lied], you would ask them questions and get to a certain point and all of a sudden they don’t know anything, the house they went to, the friends who were there, etc. Often they’ll say my friend saw this but she doesn’t want to get involved.

Consistency in their story. I’ve never been raped or abused, but there has to be consistency, and there has to be something about their demeanor. By just being older you can tell whether someone is lying. It is also a gut, also the probability of it possibly

happening. Also being older and just having more experience. You also have to gage whether there is a motive to lie.

Some of it is a gut thing, but a lot should depend on the evidence. Is it [victim's story] consistent with the evidence? Is it dispelled? Motive becomes critical with the victim because sometimes a victim gets angry with a partner because they are cheating and they make allegations that things happen so you have to get to the bottom of that and make sure there are no ulterior motives.

It's a feeling you get when interviewing with them. Most victims will be inconsistent in terms of patrol, detective, to DA. It's about evaluating how she answers. It's more of a gut feeling.

Your gut. After fifteen years it's just my gut. You can go through a checklist, can you corroborate things. It's also how you interview. What were you watching on TV, if watching TV? There's corroboration that proves a crime and then there's a corroboration that brings a ring of truth. Most young people put themselves in harm's way. They ditched, saw movie, met at a park and drank. They were drinking locos and doing blunts. It is easy to confirm that stuff.

Instinct and whether facts make sense given the situation and the evidence: if they have a secondary motive for falsehood such as trying to punish the suspect in any way. I'd say the victim is not being truthful in one in forty cases. For the most part they're being truthful. This isn't really something you make up. There's the teen cases where they lie to stay out of trouble when caught skipping school, coming home late and suddenly there is a claim of sexual assault. But a twelve-year old saying they were molested—it's so rare I don't believe them, it's whether we can prove it.

That is a tough one to answer. A lot of it is just your gut feeling about the victim and the story she tells and whether the victim looks you in the eye. For example, I've interviewed victims who look you in the eye until you ask if they were drinking or using drugs at the time of the incident. They say no but they won't look at you. If the story doesn't make sense and doesn't match what the other witnesses said, I tend to question whether the victim is telling the truth. It's not an exact science.

It's a gut thing: consistency in the story, honesty in other things. Sometimes you can tell if they're telling the truth if they're honest about things that they wouldn't otherwise need to tell. Some things they disclose you wouldn't exactly want a stranger to know; if they give information readily every time you ask them a question. Basically I cross-examine them when interviewing them, and I ask them what a defense attorney would ask. I say 'I don't want to offend you but this is what a defense attorney would say.' And I'd say 'This doesn't make sense. First you said this and now you're saying something else. In the end I'm not judging based on a bad decision, I just want to know what happened.' Often these women will make poor decisions and use bad judgment and if you ask them to articulate why they did what they did, it might not be the same choice you would make, but if you ask them those questions—why did you get in the car with this



stranger—they say ‘I needed to go to the bathroom, he looked like a nice guy.’ It’s the way they give the answer, if they can answer right away without thinking about it. And to tell you the truth I can’t think of any cases where I haven’t believed my victim 100 percent. When they come in to sit with us I believe they’re telling the truth; the only problem is we don’t have corroboration. I think the ones that are lying don’t return the detective’s phone calls.

The second theme in responses focused primarily on victims’ demeanor and consistency as opposed to a gut feeling:

As a more senior DA once said to me, ‘You don’t have a truth barometer.’ I look at whether the story makes sense and whether the victim has any motive to lie. For example, is it a divorce case with custody issues and now all of a sudden there is the issue of sexual molestation by the father? I also look at the victim’s body language, but you have to be careful about that because you don’t know this person and how she normally behaves. A victim may have a very blank attitude and flat affect but that does not mean that she is not telling the truth. Some victims can just shut down and not show any emotion when retelling what happened.

We do pre-filing interviews of all of the sex crimes victims so that we can evaluate it. Demeanor: you can talk to someone and see if they are able to make eye contact, if they respond the way you think that they should respond. The ability to recollect detail: the truth is always the truth but there are many variations on a lie. When you have the opportunity to interview someone in person you can assess their credibility. But I have not come across a lot of cases where I thought that the victim was lying. We typically reject because of insufficient evidence. Those who lie are those who recant as a result of threats and pressure. We get more of these than those who lie about what happened.

I evaluate based on can they can corroborate what they are saying. I look for people searching for facts in their heads. I don’t like when people are not willing to accept a change when confronted with inconsistencies. I emphasize how serious these charges are and before we can charge, much less convict, I need to know the whole story. I look at their demeanor and whether the story makes sense.

I tend to believe what they tell me. I can think of only one time where I sat with a victim who started telling me she was pregnant, that it was triplets; she said she hadn’t gone to the doctor but she just knows. Until they say something that is completely off, I think who would want to sit here and go through all of this. I believe them until I have a reason not to. Whether they look in the eye; do they seem genuinely scared? Are they worried about other things? Texting?

For me, as I am talking to them I try to see if they’re telling the truth. One victim I had started to gag and throw up when talking about the oral cop. Are they crying at the right time? Do you know what I mean? That sounds terrible. I don’t know if there is a science

to it but I base it on how I feel overall when talking to them. I voir dire this with jurors saying how do you expect a victim to look, etc.

It depends on the age: ten and under I can expect inconsistencies in their statements. Defense attorneys will exploit that. Eleven and older I expect them to be consistent with initial disclosure to the investigating officer and/or the fresh complaint witness. I look for the victim's genuineness in crying and emotion that is highly credible. I do not reject it if they don't cry, but I do look for that. I expect consistencies with adults with amounts of disclosure.

Criteria for victim credibility: I'd like to have some injuries, anal things, torn clothing; a girl who goes immediately to the police; a SART exam; she's totally emotionally devastated. I'm very precise on cross-examination. One of my criteria is if they show emotion, but not hard and fast because some don't cry. They must be consistent. [I tell victims] I need to know if you have done anything, I just need you to be honest. [I establish victim credibility] by seeing if she stays consistent and doesn't change. If the testimony of one witness is to be believed the jury can convict. In terms of going to trial it's better to offer probation over three years state prison. Isn't that better than going to trial and something funky happening with the victim?

Usually I do what I assume jurors do. I look at the victim, the facts of case, and body language. There have been times where a victim comes in and gives a bizarre story: the victim said the Holy Ghost said he would rape her, and even then I would look at the detective and ask for more corroboration. I look at what she says, and I question her thoroughly, the way a defense attorney would, to see if she has all the answers. Is she crying? Is she calm? Is she angry? Does she have a reason to be vindictive? Is there a divorce pending? I dismissed a teen case in which the victim alleged her stepfather raped her and that he was the father of her child. I do the same thing that any human would: listen, and see if the facts make sense.

Sometimes you will have corroboration from other people, and you will know the victim's history—whether the victim has prior crimes of moral turpitude. You also can look at the victim; that's why we meet with them, to look at how they answer questions. It's easy to generalize here but it really is so specific to each case. You always look at the whole picture.

You look to inconsistencies, demeanor; you evaluate everything going on, as well as corroboration. What are the other circumstances going on here? For the jury credibility is everything. There are always inconsistencies. There is a separate charge for each penetration. Even if there is one break in the rape, every insert is a separate charge. In terms of demeanor, that is hard. We don't know this person and they're coming to us for the first time. It's not one thing. Everybody is different.

I'm not a lie detector. It's the same routine in terms of picking a jury. How do you know you are picking the right people? You don't. You make educated guesses. Sometimes it's obvious they are lying, and it doesn't make sense. And it doesn't flow right. Basically if

you're a trial lawyer you are cynical about what anybody tells you. People lie and sometimes they lie to help themselves, or to hurt someone, but the reality is when they come in here and they are interviewed. We all do interviews here. It is really up to us individually as to whether we believe the witness is going to be able to take the stand and be believable. Sometimes they have all the right things to say but their demeanor is such that they are a big problem to put on the stand because they are inarticulate or have social issues. Some of the homeless people are like that.

Finally, a couple of interviewees emphasized that a corroboration requirement in place at the district attorney's office specific to sexual assault cases protects against un-credible victims:

I never know for sure if the victim is telling the truth. I can say that I believe the victim but I wasn't there so I can't know for sure. That is why we have this corroboration requirement so that we are not basing it on her word alone.

I try not to make the focus whether I believe someone or not. If I absolutely did not believe the victim, I would not file. But usually it is the converse: you believe someone but there isn't any corroboration so you can't file charges.

The following section examines the strategies employed by prosecutors to build rapport with sexual assault victims.

### **Establishing Rapport**

The use of advocates is helpful. Our job is to prosecute the case and keep the victims involved in the cases. Victims often have so many other issues they need to deal with: therapy, housing, doctors, etc. Thank god for victim advocates because they assist with all of that. They are awesome because they can deal with those issues directly, getting them through it, and holding their hand in court so they're not alone with the defendant's family in court. When a victim comes in I initially speak about school, work, pets—like you do with anyone else. I talk with them about what you have in common, and usually it goes from there. I will usually talk about mundane things. I always tell them this will be really hard, it will be uncomfortable, and court will be very difficult. You can always call me with any questions. From now until the end of your case you're going to know me.

The majority of responses emphasized that rapport building requires making the victim feel at ease and that victims are seldom uncooperative:

The key for me, what I try to do is to listen. Let them be heard. Try to speak to them on whatever level they are on. Try to understand their background before getting into all of the details about the traumatic incident that they are reporting. You have to try to get

them to open up to you because they feel comfortable enough to trust you. Many of our victims do not trust anyone because they have been abused for so long. I use the victim advocates a lot. If victim has made a good connection with the first responding officer I will bring that officer in on the interview. Whatever it takes to create some type of trust, that is what we need to do. If that first line can't adequately speak to these people, then the case is done before we even start. One thing I have been trying to express to the officers that I deal with is that they need to be better trained in that area. This is especially true of the DV cases. The responding officer should audio record the initial interview, because we know that in a DV case the victim is likely to recant and if we don't have that initial statement recorded the case is dead. But even if the victim is uncooperative, if we have that initial statement we can file and use that to get a conviction.

We all have different personalities. I try to put them at ease but there are times when you can't. I think I am successful and I think they want to talk to me. I am a good listener and I always let them say everything they want to say. They have to have confidence that they have been heard.

It is very difficult, especially with kids. I tell them I am here to work for you. I don't sit and color and play, but I make it clear that I am on their side. Something that has been effective is to say no one is judging them; that I've heard everything under the sun and nothing is shocking and nobody is blaming them. That helps.

Just talk to them. Do not be judgmental. Let them know it is not their fault and they were right to report it and our office and the agencies will do whatever it takes to assist them. We don't only interview the non-rejects or rejects. It takes time and they have to be willing to do it.

I acknowledge it is difficult for them and I try to talk about something else even for moments beforehand. I think that easing them into the process is helpful. One thing I tell them is my burden: there are times where I might believe you but not file the case. Maybe it is just me, but I encourage them not to let the person win; that they can have a great life and not hinge success based on whether I can get prison out of this or whether the jury believes you. I have been fortunate in that I think victims respond well to me.

It is important to meet face-to-face and try to treat them as you would want to be treated; that they are not just another case in my caseload. Acknowledge what they are going through is one of the most horrible they will hopefully ever go through and that you care for them as well as the case. I care about securing a conviction but I won't do it at any cost to them. They matter.

With kids: I ask about school, what they like to do; teenagers, sort of the same; grownups: how are you? Do you want some water? It is sort of hard because we are

under time constraints so we don't get to have the soft build up that would be nice for them.<sup>102</sup>

We have a Hispanic base; I think they can relate to me. I also talk about the fact they're not in trouble. You are here because something happened to you. I think the biggest fear with women is they are intimidated by me as a male and the officer who is [often] a male. I try to tell them I am not intimidating; as a deputy district attorney I am here for you.

I just try to be honest with everybody. With young adults I try to be honest and empathize with what they've been through but sometimes you have to ask hard questions. I like to use in my perfect world every victim would get justice but in the real world other people make decisions. Victims like to know what's coming. I'm in court every day so it's comfortable for me, but not for many people. It's important to make yourself available because victims are going to have questions before, during, and after the process. It's important to be honest and to recognize they're going to be frustrated and embarrassed and nervous and all of those things are OK because this is not easy.

I ask them questions about themselves that don't have to do with the crime. I answer any questions they have; I tell them things about myself. I try to find things in common between us. I try to make them feel comfortable and safe and in control. I let them make small decisions: where to sit, where to have the interview; small things to make them feel in control of their surroundings and situation. I always ask if they want to have someone with them but I discourage it if there is a prior relationship because it might impact what they disclose. Advocates are good but the more people in the room in their mind the more people could be judging them. I try to just have the detective sit back. I always tell them I will not judge them, to just tell me the truth, it doesn't matter. I'm not going to judge why you did something; I just need to know why. Lots of victims make poor choices and they do things that don't make sense. But once you have them explain their thought process all of a sudden it makes total sense. You maybe wouldn't have done it that way but when they explain it you get it. The key is to ask questions about why they do things that don't make sense to us.

It is different with every victim in terms of age and socioeconomic status. You cannot speak the same way with different people. With teens, you cannot speak to them like they are children; it insults them by doing so. You have to try to explain to them what is going to happen as if they are adults. With adults, you have to keep in mind where the person is coming from. A professional at a tax firm walking to her building needs different treatment than set of prostitutes who were raped at gunpoint in terms of the language used, how you describe the next step, and your expectations.

It depends on whether they know the defendant, or if a relative, because as time goes on they start feeling bad for them and conflicted. I make sure they stay on with me and that I

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<sup>102</sup> This quote comes from a Deputy in Charge of a VIP unit. S/he stated that s/he does all of the pre-filing interviews and the lawyers working in their unit have about thirty cases each which is "probably about ten cases too many for each of them."

have their current information if they are not in court. That happens a lot. Often in context of DV they start to go backwards.

I try not to take it out on them personally. I let them know that I think they may not be truthful and they should come to court and tell the judge the truth.

If I can't break them I will bring in the victim advocate. They are usually female. If they are combative and uncooperative from the beginning usually the officer will give me a heads up. I will tell the advocate and they will talk to the victim before they talk to me because I get seen as part of law enforcement. Advocates are a very, very important figure in our ability to deal with recalcitrant victims. Not that we are buying their testimony; they understand that we are here to help them. They are a huge role in turning victims. I reiterate the same information they did once I get them. And I usually sit next to them, not across. Never. [But] if they're uncooperative or hostile, they won't come here.

It depends on age. If it's an adult and it's a custody case, you don't have much time to establish rapport. A lot of it is built as the case moves toward trial. I always call my victims back. They have my cell phone number. I am also totally honest with them. If I think that it is going to be a tough case, I don't sugar coat things. I tell them straight that it is not going to be easy and that they are going to be grilled about their behavior.

I just try to be straightforward with them. I know that we are busy but if you sit down and give them your time, they appreciate that. If you tell them that you are here to get the truth and that you are not going to judge them. That is my approach.

It depends on age, but number one I am a woman, number two I am a mom, number three I am a wife. I take off my lawyer hat and act like a friend.

As early as the pre-filing interview, I make sure that they know that this is difficult and embarrassing but that it also is a therapeutic process. I tell them that testifying at the prelim is essential. It is a show of power to the defendant and signals that he is not going to get away with this. He took your control away from you by doing this, but now you are going to get it back.

I also like to take them to court, to introduce them to the judge and the staff and let them see the setting in which they are going to be in, especially with kids. With adults, I walk them through the entire process and explain in detail what is going to happen.

Our policy is that the victim, if available, should testify. Some people think that you don't want to give the defendant an opportunity to cross-examine the victim early on but I think that it works to our advantage. With an adult sex victim, especially if it is a stranger rape, we want to talk about it anyway with them. I tell them why they are here, what we are doing, and what the process is. It is another interview not because we don't believe them, but because this is the process: you tell your story so that we can file the case and move forward.

Sometimes where there is a current sexual assault and you find a prior case and you bring in a prior sex crime victim you get resistance from them either because of [prior experience with] a crappy DA or police officer. I am more likely to get that [hostile victims] with DV. We ignore that and proceed. Unless she disappears, gets lost, or we can't find her. I won't reject a case if it was up to filing standards. That in and of itself is not a reason to reject.

Another DDA noted the opposite with regards to victim cooperation as a reason to reject:

I will explain, depending whether I think I have enough to file, that they have to testify. If they won't cooperate that is a reason to reject.

The remaining examples are distinct in that there is no emphasis on the role of the prosecutor in setting a tone during the rapport-building process with sex crimes victims:

There are people who are very defensive and very difficult and are antisocial and they happen to be victims today but yesterday they were in prison for something. I had a lady where I would not do the interview unless they sent two deputy sheriffs because she had a reputation for being violent.

There is not much that can be done if the victim is uncooperative. I have to explain if he did this to you then he is probably doing this to other people. As a general rule if they say they do not want to proceed there is not much we can do so we reject them. In DV cases victim cooperation is different.

If a case is rejected, who tells depends on the victim. Sometimes the victim tells us she does not want us to file the case, so that is easy. Sometimes you need to review the case and decide or ask for further investigation, so in that situation it would be up to the detective to tell her why it wasn't filed. If we are going to file it and I know that immediately, I tell her. Some of them don't like it if we don't file it.

I just try to let them know that for whatever reason the report came out; it is out. I let them know that there is no going back at this point, that this is all out, and let's just do the best we can from this point forward. The young teens who are having consensual sex are often the most hostile and uncooperative.

Finally, a Deputy in Charge of a VIP unit stated that the best way to establish rapport with victims and minimize inconsistencies is to have a "Rollout" program in which a lawyer and a detective interview the victim and go through the initial report at the same time:

Instead of LAPD or LASD doing a two hour interview after a two or three hour SART exam and the detective then having to bring the victim for another hour and a half

interview with me, it is much more effective to send a lawyer from my unit with a detective and the victim can go through one report. It is also better for the victim to see the lawyer and the investigator as one team from the beginning, and we can make counseling referrals then as well.

The following section examines how the relationship between the suspect and victim affects charging decisions with an emphasis on cases involving intimates.

### **The Suspect/Victim Relationship and Charging Decisions**

Some interviewees stated that they had little to no experience with intimate partner rape cases:

I haven't had any spousal rape cases.

I had one; it pled.

I have no experience with spousal rapes. It has come through a few times but it's very rare. I don't think it's reported. We don't get them very often.

I've never tried a spousal rape case. I know they are harder to get filed. I don't see many get filed. I think it is because for a lot of the women it is more a threat of violence in future and constant emotional battering down and not so much injury. No corroboration and no one witnesses and it is left to his word against hers.

I have never had to do a spousal rape, but I have done boyfriend/girlfriend. In these cases the victim has feelings for this person with whom she has been intimate. They are difficult cases because they still have an emotional attachment to the perpetrator but at the same time have been violated.

We don't get a lot of adult intimate relationships; those go to family violence. Unless they are intimate partners that don't live together, but I haven't had one of those in four years.

My guess is that in a spousal rape case the jury would not convict unless the victim has a black eye or a broken arm and the duct tape and rope were found.

Others offered reflections based on experience with sexual assaults involving intimates, and observations about how this form of sexual assault contrasts with jurors'—and, by proxy, society's—perception of sexual assault:



Time is the only way to make change in society. Thirty years ago there were jury instructions stating that a rape charge is easily made by the victim. Justice Arabian refused to give that instruction and he is now on the California Supreme Court. Not many jurors publicly state it but they will say they needed more [to convict than just the victim's word].

The main issue is consent. If they previously had a relationship and were broken up for a while, those are easier. If during a consensual sexual act the victim says stop and the suspect continues that is considered rape. Legally it makes sense but it is a different reality to prove.

We see cases involving intimate partners if the relationship is under two years; if over two years it goes to family violence. There are a lot who are boyfriend/girlfriend and have been dating a while. It is much more difficult to prove and the testimony is they had consensual sex the day before; even if having DNA it doesn't help.

At first I thought they were so much harder because you have to convince the jury she didn't want it because they're married, but I'm finding again it's the phone calls. If he's in custody and they call from jail, they will always call her and threaten. I had sixty phone calls from one suspect to a victim; twenty-eight received calls. All it takes is a FAX to request the records, but you need time to listen to the phone calls. You pick time frames: maybe right around the time of arrest, right around the time of arraignment, prelim, and particular court dates, because that's when you get 'please do not' or he threatens; or you get them calling mom or someone else. That's something we're starting to do. Another VIP deputy who was here when I had a victim not show up for court and it was set for trial, they asked did you pull his calls? You're going to have that in an intimate [partner rape case].

They are very hard for jurors because she has consented sixteen times [previously]. What's the history of their relationship? Does the defendant have a reasonable belief [that the victim consented?] I tried that case in [a courthouse] on a transcript. It was DV and a spousal rape. That's not the same thing. She testified at prelim, he was good for it and righteously there was a DV component. A colleague read the transcript and they convicted him. I tried one where the ex-husband shared custody of child, and they found him not guilty of rape but guilty of oral cop. Most spousal rapes are not reported. They are much more quickly to report physical assault.

Spousal rapes and DV are incredibly correlated. She's only acquiescing because he just beat her. They have a track record of having sex once a week, and then he rapes her after he beats her. I believe there are many men in communities in our country who think women are chattel. In Southern California we have hundreds of DV cases involving newcomers and Hispanics. Date rape is usually a onetime thing, but a wife will say in spousal rape, 'Well, he wanted sex so I let him do it.' Maybe this time he punches her. [She says] 'I didn't want the kids to get upset so I didn't say anything.' She says she didn't want to do it, and thinks 'I am a person with innate self worth and dignity' because of acquiescing so many times. It's like a Jerry Springer thing. Why don't they get

divorced? We win [cases] with bad injuries; [if] we get a confession from that guy. Those [intimates] are most difficult because you have a track record: she's up on the stand and the guy is saying 'Ask her about the time she asked me to tie her up.'

I had one woman storm out of an interview when I told her that her case would not be filed. I understand the frustration. You take a victim who has been abused over and over again but has not officially documented any of that abuse and now is reporting a sexual assault. Because the prior abuse is not documented anywhere, we can't get any corroboration for any of the prior acts. This is complicated if the victim waited six months to report this crime. No matter what the officer did, we can't get any forensic evidence because we can't do a SART exam. So victims are frustrated.

If they had an intimate relationship and there is no physical evidence it is likely to get rejected. Under rape shield laws prior consensual sex comes in, which is enough reasonable doubt not to convict. If acquaintance rape with no prior sexual relationship those are better; it depends how long they have known each other. Men can become aggressive at any time, but when a victim testifies if they have known each other a while they will grill her on his lack of prior violence in terms of prior sexual contact with the defendant and now she saying something forceful happened. For example, I had a case involving a CEO and his secretary who began dating and then broke up. He had given her money, she had disclosed before. They had prior rough sex. I never got past a prelim on that case.

I have only had a few filings and what I have found that the most difficult thing is that there comes a point where they reported. That incident may have been a little more violent than previous ones or that they said I just can't take it anymore. It is almost like it's not a sex case anymore but it is a straight DV case. I don't want to have sex with him because he is drunk, he hits me, and now he wants to have sex with me and I don't want to. Also, they never call you back and we lose the victims because they have changed their minds.

These can be challenging cases. Right now I have two cases: one is a marital relationship and one is a DV case. Both are cases involving sodomy and conservative Hispanic women who don't believe in anal intercourse. It does influence the case. Whenever you have an intimate relationship, you have to look for the potential motive to lie. If you assess all of those issues in the pre-filing interview and still find the victim credible, you can find a way to present it to the jury and it is still righteous.

I have seen a few and I don't think that I have filed any yet. They are very difficult cases to prove. There is the issue of consensual sex and then the allegation of forced sex. I had another case where the victim alleged that she was being forced to have sex for an entire year and did not report it. We had a case that was rejected where the victim came in and said that her boyfriend sodomized her. She said that she would never have done that but to prove lack of consent while they are still in a relationship is very difficult.

In summary, prosecutors stated that the victim/suspect relationship does impact charging decisions (but see the results of our analysis of charging decisions in the previous section, which revealed that the victim/suspect relationship did not have a significant effect on charging decisions either prior to or following arrest) because nonstranger suspects most often use a consent defense and victims may have a motive to lie. The following section discusses the role of corroboration in nonstranger sexual assault, known colloquially by many of the law enforcement personnel with whom we spoke as “He said/She said” cases.

### **Corroboration in “She said/He said” Cases**

While all interviewees stated that the LA County District Attorney’s written office policy requires a pre-filing interview with the victim before filing charges in sexual assault cases, it was unclear whether corroboration of the victim’s testimony, also noted as a requirement, emerged informally and is unwritten. When asked about the presence of a corroboration requirement given they were removed by many state legislatures in response to rape law reform efforts, an interviewee stated, “Corroboration has been removed. In the sense when we think of corroboration regarding late reporting it could be something as little as someone else saying he did that to them too. I think the definition has changed.” Another prosecutor stated, “I would want it. I don’t know if technically it is required, but these cases are not easy to prove.” The following statements from prosecutors demonstrate their expectations of what corroboration in a sexual assault case should look like:

A good confession. Suspects confess more often than you think. Or an admission. Something indicating guilt, but not a full confession.

It depends on the case. If DV, we look for injuries. We sometimes have cases that are mutual combat in which we’ve filed against both people. It depends on the case.

Physical evidence, vaginal or anal trauma, subpoenaed phone records. If she states they drove by a gas station then peruse cameras in the area.

Physical evidence that corroborates the victim's allegations. I want to see some kind of injuries that corroborate what happened. A lot of times she is so drunk and passed out that she does not know what happened. But every case is fact-driven and fact-specific.

There's always something. In this one she said they had sex against her will and he threatened her with a knife, did weird stuff, lit gas burners, lit an iron cord. Corroboration is the iron and the knife are right next to the stove and the officers thankfully took photos of everything that morning; even photographs, something for jury to look at. Or, the earlier example of the pillow on that back seat of the truck; another example is he beat her up and raped her. She's on top of him, but he had within arm's reach a sledgehammer. A picture helped to corroborate that.

The sooner the reported the better for physical evidence such as injury to indicate nonconsensual sex. Sometimes the suspect will send a text message apologizing, which is always helpful. If the suspect denies but we can prove they had sex that's helpful.

A fresh complaint witness; that person has to be interviewed. We need to understand the circumstances under which the complaint was made, the victim's demeanor, and also the suspect's. For example, the other day I had an ex-neighbor situation and the suspect showed the victim was texting him afterwards.

Our office policy is that sex crimes are not filed without some type of corroboration of the victim's testimony. I used to think that this was terrible—I don't need corroboration in a robbery—but I have come to believe that it is a good thing. We don't want to put victims, especially children, through the process unless there is a good chance of conviction.

Corroboration: legally speaking, an admission by the defendant, eyewitness testimony, and physical evidence. Sometimes we stretch it and we will call things corroboration that really aren't such as a fresh complaint by the victim. There is some discretion and if you really want to file a case you can find a way to do so.

DNA; a SART that is consistent with her claim; physical injury that is consistent with whatever she's saying. If she says she didn't fight him, OK. The Sheriff's department is good at scoping for physical evidence at the crime scene. Hopefully he'll say something. I haven't seen text used but pretext is compelling to hear his tone and intonations. It's recorded.

Vaginal tears, anal tears, video. You'd be surprised how many guys video it. Instant messages.

It could be something like ripped clothing, injuries on the body somewhere, a SART exam if they can find evidence of trauma, a 911 call where you can hear hysterics in the voice, fresh complaint witnesses. There are times where we will have it when someone is running out naked in the streets calling for the police. If the defendant runs, if he confesses.

Physical findings, prior reporting to friends and acquaintances, the defendant's criminal history, the defendant's statements, prior victims from the same suspect.

Fresh complaint witnesses, injuries consistent with the way she says it happened. Physical evidence: a broken windshield if the guy had a lot of rage, heel marks on the windshield from self-defense. Then again in a stepfather case there was no DNA evidence. I had a thirteen-year old girl's diary, which corroborated her testimony. I need anything to show they were there at that moment they say they were, in the position they claim they were, and then you can build on that; [for example], friends to speak to the victim's demeanor before and after. For example, if something happened at a party, a person to corroborate what happened.

If it is a claim of lack of consent by someone whom they know, then I'm looking for medical evidence: bruising, tearing, defensive wounds. I had a case prosecuted last year involving a boyfriend and an ex-girlfriend. He asked to speak with her, told her he had her property and said let's go for drive. He parked in Ladera Heights and tried to rape her. I absolutely believed her because she had bruises to her face and neck entirely consistent with every step of the way she described the wrestling, him getting on top of her, holding her down, had scratches where they should be: bruises on her inner thighs where he tried to pry them open. I'm also looking for a statement from the defendant. You may have alcohol but if the girl is unconscious that is rape. What was her blood alcohol level? What was on the tox<sup>103</sup> screen? The problem is there's not always corroboration because it is so often a late disclosure. We do acute and non-acute exams. Non-acute means no chance of getting evidence because it has been too long. Almost all cases are disclosed too late for evidence. If nothing medical or DNA, you're needing other evidence such as a pretext phone call, a defense admission, or prior acts on the part of the defendant.

Physical injuries, admission by the suspect, or other pieces of evidence that corroborate the victim's story that couldn't be explained unless the victim was victimized. I had a case where the defendant knew the victim but raped her and she was so afraid. I knew it was a 'he said/she said' but while she was driving home she called her mom saying this guy has a gun and is trying to rape me. If this was consensual why would the victim do this? The police put an airship over the car. [Another example could be] a witness who sees the victim act a way that lets you know it wasn't consensual. For example, I had a witness who saw the victim walking into the abandoned building with the suspect saying that she looked as if she was crying but the witness thought they were a couple. [There you have] a witness corroborating another part of the story that if she was lying it wouldn't be there. Sometimes you have witnesses who see parts of the crime, enough to corroborate [that it occurred]. I had another where a girlfriend broke up with her boyfriend and he came to her house, banged on the door, took her in his car to his house and raped her. She escaped and when the police found her it was rainy and she had no keys, no shoes, and no phone. It corroborates she was kidnapped. My corroboration was the cops in that case. You need to ask the right questions to get that corroboration to get

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<sup>103</sup> Toxicology

the whole story and look for the corroboration in those little points. If victim says I was afraid and called my mom, get the phone records.

Interviewees were then asked whether there are “she said/he said” cases where they would file charges without any evidence that corroborates the victim’s testimony. While some emphasized that office policy expressly prohibits it, many interviewees emphasized that time and effort can make a seemingly non-fileable case fileable:

No. That would be a violation of office policy. There are cases where I would like to but no.

If there is no corroboration there is nothing we can do. Something I look at is whether the suspect has priors, even an arrest. I will have the detective pull it and I will look to see how he denied it. Sometimes what we’ll do is they’ll bring it and we don’t have a statement from him yet, so we will have them arrest him and talk to him and then we’ll know.

Whether it will be filed will depend. There could be allegations of force and yet there is no evidence of injury. Sometimes there is so much threat in the situation that the suspect does not need to use force. A SART nurse would have to explain this. It really is a case-by-case basis.

He said/she said cases where there is absolutely nothing but the victim’s statement are not going to be filed. But if you want to file the case, you can sometimes find *enough* [emphasis in enunciation] corroboration. We also have to look at what the victim’s motive might be for making something up like that. So, we look at custody issues when we are interviewing victims.

Usually in she said/he said cases there are other things going on. You have to examine what motives there are to possibly lie. If you can gather enough things to negate that then you can proceed. It takes examining what may seem like a non-fileable case and making it fileable. You can have victims who are very compelling. There is wriggle room in terms of what happens. The main goal is to get registration and it is a good mark on the rap sheet, which paves the way for our future cases. As more of the DNA kits are analyzed you can see how a rapist evolves from victim one in 2001 to victim ten in 2009. I have made those calls where a case was rejected and then we return to them. The reality of what happens is different than what policy dictates. Many DAs don’t file when they’re not easy cases.

Yes. I filed a case without corroboration. The victim was fifteen years old but it happened on an ongoing basis while she was twelve through thirteen. His admission was ‘I touched her breast once.’ She doesn’t recall that one. Depending on the cop they may say

something just to get the cop to stop if it happens for a long time. My burden is beyond a reasonable doubt and that is an individual doubt. I need an admission from the suspect. Hopefully the victim is consistent. The problem with detectives and district attorneys is we ask different types of questions so reports based on our interview may appear to be inconsistent but in reality it is an artifact of questioning. Everything is discoverable so interviewing the victim prior to trial the defense gets a copy of it. Example: a victim tells the detective he touched me. The detective wrote victim said the suspect penetrated me with his finger. Those are two different charges. I had to ask clarification. Now this becomes two different statements: the officer interpreting it as penetration and me clarifying and it makes the victim look like a liar, which ultimately undermines her credibility.

I am hoping that the suspect gives an admission. The suspect may admit to three incidents but the victim talks about ten. Then Dr. Jamie Jones talks about the stages of child sexual abuse, but the problem with juries in [a courthouse] is they'll think 'Who is this white lady giving testimony?' They will say it is psychobabble.

In summary, prosecutors described corroboration as something other than the victim's word that affirms a sexual assault occurred. They emphasized the importance of cell phone records, emails, pretext phone calls, fresh complaint witnesses, and evidence that demonstrates the suspect has a propensity to commit sex crimes as seminal factors that influence their filing decisions. The next section considers the impact of victim and/or suspect alcohol and drug use on sexual assault case outcomes.

### **The Role of Drugs and Alcohol on Case Outcomes**

We then asked prosecutors to describe how substance use on the part of victims and suspects impact whether charges are filed in sexual assault cases. Consistent with LAPD and LASD detectives, deputy district attorney interviewees agreed that alcohol and drug use is more relevant to sexual assault victims in terms of detrimentally impacting case outcomes, whereas for suspects it either does not enter the equation or it is presented to bolster an assertion that the defendant had reason to assume the victim consented. However, respondents varied in the extent to which they noted that drugs and alcohol are an expected factor in these types of cases, and whether their impact is insurmountable for a prosecutor.

It has to be evaluated in two ways: if voluntary or involuntary for the victim. If voluntary, people do that all the time. If it affects her memory to where people don't believe her in that she may have consented and forgot but the defendant had a reasonable belief that she consented. It is a general intent crime. A defense to a child molest is 'I was so drunk I couldn't perform specific intent,' but rape, sodomy, and forcible digital penetration saying 'I was drunk or high and don't remember' doesn't work. If your body part went into that orifice then it's a crime.

In terms of date rape drugs, a lot of times we can't prove that someone was drugged. These are very challenging cases because often the victim doesn't know what happened. I have yet to have an actual finding that there were drugs in the victim's system. By the time they report, whatever the guy gave them is gone.

A victim that drinks or does drugs, jurors do not like them. They feel like they knew what they were getting into. Judges also do not like these types of cases. Even in situations alleging that the suspect slipped GHB<sup>104</sup> to the victim. Between the LAPD and the LASD I've seen only one case of GHB showing. By the time the victim gets services the GHB is all gone from her. [In one recent case we] did undercover work with the victim. We sent her to a bar with LASD detectives. She got the suspect to say 'I had to knock you out.' We played that for the jury. It took them two hours to come back not guilty. She left with a tear in her anal cavity. She reported the next day. In interviews with the local paper jurors said they did not believe the suspect or the victim and there was not enough to convict. There is a double standard when it comes to these cases that I try to explain to jurors. If I want to take money from an ATM and I see there are gang members outside but I need money and go to the ATM anyway and get robbed. Do we not arrest the suspects?

I want to be honest with them. The defense attorneys will paint you as negatively as possible. I tell them I am asking them this so we can have the truth can come out. We are all humans and make mistakes. I know that some of the things they have done are things that twelve jurors are unable to reconcile with. I've found that if people are not surprised then they do better. The police deliberately ask weird questions that don't matter. If you keep saying I do not know and do not remember it undermines your confidence and you feel incompetent. If they have an idea of the ways that they are going to be attacked then they do better.

It has a role. If the victim is portrayed to be an alcoholic or drug user they will dirty up the victim and say it didn't happen the way she said. She was drunk and consented and is changing her tune now. Most often the suspect is sober.

If both in the course of a sex crime are under the influence it can mix up her recollection of what happened. A victim I filed on had a .2 alcohol level but she ran out of the house naked when she was assaulted and a neighbor saw. That case is scheduled for trial.

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<sup>104</sup> Gamma-Hydroxybutyric acid



I sit across the table from them and try to figure out whether they are telling the truth and would a jury believe them. How do they react to the questions, do they appear to be withholding information? I have had victims with rap sheets and records and it does not mean that they are not victims worth fighting for.

A good percentage of my cases right now are victims who drink to excess and pass out. Juries don't like these kinds of cases. But just because a woman is passed out does not mean that they deserve to be taken advantage of. Most of these cases don't get filed, but some of them do. I have taken some to trial and won.

With adult sexual assault there tends to be a great deal of that [alcohol and drugs]. The victim and suspect are friends and there is a lot of drinking going on and there may be marijuana being smoked. As far as the victim, it may affect her ability to explain what happened. I find that as long as we explain that the jury will understand. You have to make sure that the jury understands what the law is and that resistance is not required by the law.

Alcohol and drugs make these things far more likely to occur. Often you have defendants with substance abuse problems, or have a few drinks and make poor choices. Within the DV context, they often get wasted, beat her up, and have sex with her. With victims substance use is not as often. Well, if she's been drinking it comes into play or if she was drinking it's hard if she doesn't remember in terms of what she says happened.

So often in these cases alcohol and drugs are involved, definitely by the person doing the abusing and almost as consistently by the victim as well. I think of it as ever present. It is hard to think of it as separate. They almost negate themselves. But obviously we need it to prove intent.

It complicates any case, not just ours [in VIP]. People might remember less, and most people are less inhibited in that case. It only complicates it because the defense is going to bring it up. It comes into play, but it doesn't change my decision on a case. We get a lot of date rapes, parties that have gone bad, but not too many rape by intoxication. It's a reality in reviewing these cases that alcohol is often present. It hinders judgment and puts victims in harms way. Just because there is drinking it doesn't necessarily make it a reject; it's at every party and in most social situations. It doesn't make a reject, but it makes the case from an evidence standpoint complicated because if talking about adults it makes arguing lack of consent very hard. What if she consented but she just doesn't remember? I have rejected cases where the victim says I don't remember consenting yet they remember other things in detail. It doesn't affect credibility; it affects the ability to recollect. In jury instructions, witness credibility is not just motive, bias, and feelings, it is also the ability to recollect, perceive, and recall events. A good defense attorney won't persecute the victim. They will say I feel sorry for this victim but the ability to recollect impairs her ability to consent. This poor guy gets convicted because he perceived this. You don't need motive to lie here, just a mis-recollection of events.

Alcohol or drugs make it more difficult if they behaved in a way that might lead the jury to believe that the defendant could have reasonably believed that the victim consented. If the victim was using illegal drugs, we know that the jury won't like the case and won't like the victim. We are always thinking about how the jury will react to the victim and how the jury will evaluate the victim's behavior.

Again, it all falls back to the whole concept of whether there is corroborating evidence and the amount of corroborating evidence. I can have a woman sitting in that chair and I know that she is telling me the truth but I also know that I cannot file the case because I don't have any corroboration. I know that I have rejected cases where I truly believed the victim and knew that she was a crime victim but there is nothing that we can do to prove that case in court. Perhaps the only hope is that we have documented the incident so that if this person does this again we can make the new case stronger. This is something that I tell victims if I reject the case: you did the right thing by coming in even if the evidence is not strong enough to file the case. If he does this again, to you or to someone else, we have the documentation from this case that will make subsequent cases stronger. But there are options: they can do a pretext phone call in which they confront the suspect about the incident. We then evaluate the pretext phone call to see what was said and is it enough [to file charges].

Alcohol or drugs play a large role when it is an acquaintance case and we are discussing consent. Does she remember what happened and is the jury likely to believe it? Does she have buyer's remorse as a result of her behavior and how is the jury likely to view this? A woman who passes out and can't remember what happened—this will affect her credibility and how difficult it will be to prove the case. If it is a stranger rape, I am less concerned about whether drugs and alcohol are present, but even in this type of case it is going to impugn the credibility of the victim.

Very rarely do we take into account the defendant's drug or alcohol use. It can be a defense: voluntary intoxication can negate intent. If drunk then they couldn't form the intent. As far as victim intoxication, if it's rape by intoxication and the victim is saying I didn't say no but it's because I was so drunk I couldn't formulate a word but then they'll say afterwards I told him this, or beforehand I said this. It is hard because they say they said something but then can't remember in another moment. One thing I've noticed is they'll say they texted their friends before and after, and we'll look at text messages and they've sent many with no spelling errors. It's hard with those cases to tell the differences between being taken advantage of while drunk versus being raped. People may have done things they wouldn't do when sober but it doesn't rise to the point of rape; it's more like regrettable sex. People see things on TV, the public service announcements, and start creating excuses in their mind for their own behavior and it's hard to distinguish the line.

If the victim and suspect are so intoxicated he can't discern whether she's able to consent, then it would not be a filing. I always ask in every adult case where they've met at bars, I ask the victims: in the shoes and mind of the perp on the night in question, if you were him, however you behaved, whatever you were doing, was it clear that you were not a willing participant? They either say yes or no, or why, and I say what were you doing or

saying? And sometimes they say that's a good question, and they understand. In every case there will always be a weakness or problem; especially in acquaintance cases instead of the stranger breaking in with a ski mask. Usually they're not so drunk they don't remember what happened.

If the victim can't remember it, forget it. Unless there is good corroboration I'm not sure I believe her. General society still has an archaic perception that if a woman voluntarily goes with a man to have a drink and she is intoxicated—and although no one wants to articulate it—there is still an idea that she is loose. Not sure if that is the police or DA's job to fix but that needs to happen.

I have not tried a case involving drugs or alcohol. I have rejected cases involving them because the victim's memory and ability to recall is extremely tainted and when it is the victim's word against the defendant's I have to be sure the victim can recount what happened to her. And it does play a big part in evaluating the victim because when I present that to a jury they are automatically going to assume that she does not remember. It depends on the degree of intoxication. I have rejected three of those.

Huge. If the victim is drunk her ability to recall events is minimal so when we look for details, as jurors are looking for details, [it sounds like this]: You're saying you said no. There are no bruises. Were you saying or thinking no? Did you voice it? For defendants, alcohol makes them more volatile, but for the defense you can't say it's a defense. It's a fact for victim because the victim is the fact teller in this story. If she can't account for a time-period it plays a huge role in rape cases, but not as much in DV.

For suspects typically no alcohol is involved. Teen victims are most often not inebriated, but a small amount, maybe one in ten, excessive drinking or drug use is a key factor. You also have to think about reporting. If someone was partying they are less likely to report.

For the suspect it doesn't come into play at all. For the victim, using alcohol and drugs 50 percent of the time it makes a difference in a negative way in that it would cause hesitancy for a juror to believe the victim completely if they were on drugs and alcohol at the time. It causes the DDA a problem to decide whether the jury would believe this person that it wasn't consensual. I think people believe alcohol lowers a woman's inhibitions, and the consent defense hurts a woman because the defendant can say he thought the victim was giving him the signs it was consensual. If the victim was on drugs and alcohol and can't remember everything then jurors believe the defendant could have reasonably believed the victim was consenting, unless it was really forcible rape with injuries. But with these cases it was a date rape situation where they were on a date, maybe kissed, and now alcohol impacts credibility in terms of ability to consent. I think also, unfortunately, if women are drinking or on drugs jurors dislike it. It makes the victim distasteful and unfortunately we have to deal with those kinds of issues. You can get by it; it's more to a matter of degree. One glass of wine or a few beers is different than three Xanax and a six-pack or being on ecstasy. It depends on the drug and how much.

Those are our hardest cases. If both parties are really drunk then we don't have a filing because how do we know that she was too drunk. Maybe the argument could be that he was too drunk and she came onto him. [A DDA] did one where a girl was too drunk at a party at her own house and her friend and the suspect put her to bed and the suspect said he would make sure she didn't die. The suspect raped her and the jury convicted but the judge overturned the conviction saying as long as defendant reasonably believed the victim consented and had the ability to then it was not rape.

This section has examined how the prosecutors interviewed during this study perceive and respond to the victim dynamics specific to working sexual assault cases; specifically, how to assess victim credibility and build rapport, the impact of nonstranger suspect/victim relationships, and the role of alcohol and drugs on case outcomes. The next section turns to the dynamics of working with law enforcement to prosecute sexual assault, beginning with consideration of the rapport between the DA's office and LAPD and LASD sexual assault detectives, and followed by a discussion of the role of each agency in decision-making with regards to making arrests and filing criminal charges against sexual assault suspects.

## **WORKING WITH LAW ENFORCEMENT**

Our relationship with law enforcement is good. We have a long-standing relationship and once you get to know the officers who routinely come in to file you have a good rapport. Problems occur with new officers to sex crimes. I feel that there is a bit of education that needs to happen with those officers. It is easier on both ends when there is continuity. Law enforcement officers and DAs who are not okay with handling these types of cases should walk away quickly. They are not going to do a good job investigating these crimes. They need to know how to talk to these victims without tainting the evidence.

## **RAPPORT WITH LAPD & LASD**

With few exceptions, when asked about their rapport with law enforcement interviewees reported a good working relationship with the LAPD and LASD. As demonstrated below, they

emphasized that specialized training and a desire to work these types of cases is critical given their investigative complexities:

Pretty good. Not all DAs can say that. I'm the point person here so I talk to all of them weekly. If they have something with them in the works they let me know it is coming.

They have a very clear understanding of our office policy of pre-filing interviews. It's important they bring in victims on time so they can do their work they need to file cases. Both the LAPD and LASD do a great job. In [a Branch] they had a great relationship with Family Crimes Bureau, now Special Victims. Their office was a three minute walk and they had a close relationship with all of the detectives. They exchanged cell numbers and worked closely and collaboratively. I imagine that it is different in every Branch and area office. Things may fall through the cracks, but we have an efficient way of handling these cases, especially with arrest cases that need to be handled within two days.

The more you can get them [detectives] on your side the more they will do for you. A lot of it is with the approach. We do have a lot of power in terms of making them come to court, but when you look at it more as a team thing, can you help me do this then we can get him, it's better. For the most part people want to do the right thing, but there is a bit of burnout plus victims can be hard to deal with. Lawyers can be difficult too. Rather than making them write a warrant there are little things we can do. I can have a law clerk get the medical report instead of asking them to bring it. In terms of investigations, there are some who are smart and thorough whereas others you have to say do a pretext, etc., and then there are others who are burned out and want to go home. Even with those detectives, if you can get them in the right manner and do some give and take you can get far. DAs can be insensitive.

Very good. There are only a few of us who handle sex crimes, and only a few of them who deal with them at LASD. We have a rapport with Special Victims Bureau. Often detectives will come and request specific DAs. When you get on the same page it makes it very easy.

Outstanding. Their investigations are sometimes good. There are great apples and not great apples. I've had limited experience with LAPD; I've always worked with sex. When doing sex crimes you want to be doing it, so the level of work is superior. Victims complain about law enforcement; not frequently in sex crimes, but much more frequent in DV when they want to recant and the detective will be snappy, short, not take their calls, and say we'll see you in court, etc.

I love LASD's Special Victims Bureau. I wish 100 percent of my cases would come from them. They will call me on my cell; they come here all the time and ask supervisors. I think my supervisor gets more of the informal questions from law enforcement. I think those that don't specialize don't care or put as much into it. They don't have the passion. Sometimes I read a report and think if you had asked differently you might have got them

to talk. I don't blame the other area [DA's] offices for not knowing how to handle these types of cases.

I had a good experience with LAPD. If they have a specialized unit in the station they need to train their patrol guys, especially in DV cases; and in sex cases.

I've had more contact with the LASD at sex crimes. Special Victims Bureau does a fantastic job: great interviews, and they are thorough and willing to help. I do not have as much experience with LAPD. I had five or six DV sex cases that were actually filed. I've had a decent experience; I had a reject and they were good.

All are giant agencies. The longer you work in a particular assignment you establish relationships with detectives, which develop into working relationships. When I came to [a Branch] it was hard to get things done because I was at [another Branch] for so long.

I think it's really good, but that's my Pollyanna view. I like my detectives and I think they're happy with me. I care about the cases and I make myself available. I give them my cell even when I'm on vacation. Some do a good job of investigating, others don't. [An LAPD Division] sex detectives are great.

Good, we deal with the same detectives. Special Victims Bureau is specialized and has the same people for a long time. The Special Victims Bureau of LASD is well trained. Newer detectives are always with a supervisor until they come in on their own. I have no complaints with LASD, but others, yes.

In the old days we had two excellent guys, but not good cases. They were trained to look beyond the pale of the circle of the vagina. They get the story and follow up. It's not just the penis; they get the stuff that comes along. We get so many people with pornography. If an adult you get a search warrant. The suspect always argues consent. We win if they don't have a hook. In the old days they never taped interviews. Now the excellent sex detectives they get pretext calls on tape, interview the defendant on audio/video, and they have techniques. An adult guy may say OK I did it, so then you need to lock him in a story. It's better to take your time. If a guy really did it he doesn't want anything further with the woman. They can break into text messages and subpoena them. It helps make a more credible and informed decision. That's all you can do. Jurors are such loose cannons.

With sex crimes you know detectives over and over. Some you work better with, and others not so well. There are certain detectives with whom we share a great bond. With others there is a disinterest and they don't want to do the work. It's more person-to-person rather than an agency per se.

From what I can see in my dealings thus far it is a very close relationship. Most of the officers we work with we see all of the time. Each agency will have a few officers designated to sex and DV.

Fantastic. Excellent. Especially in these types of crimes. We deal with the same detectives lots of times and they really care what they're doing and everyone works so hard and is out to seek justice. I don't know if it's the type of person that's drawn to this area. We have a good bond with the detectives. They do great investigations. These crimes take so much investigation and they have to go through all of these steps before coming to us and I can't imagine on other crimes they are doing as much as they do with these.

Lack of resources impact law enforcement. Their caseloads make it hard to act as quickly as they would like to, but for most part you end up good officers working these types of cases. You get enthusiastic investigators doing it because they want to.

Good. It depends on the agency. 90 percent of detectives are good and care about victims and want to file a case. Usually when they bring it in often we'll ask is it a filing or is it a reject. They'll often say a reject. We look to see if we agree with them. But I think the relationship is good and they'll do the follow up we want. We trust their judgment and credibility. They pushed for the case with the party girls. We weren't going to file it. It was LAPD male detectives who were pushing for it. When they like the victims and believe the case they will do whatever it takes to get it filed. There are a few detectives that don't care about their cases and won't do extra work even when you ask but those are few and far between.

It depends. There are some LAPD divisions that we have an extremely good working relationship with, but some seem to have a massive amount of attrition.

We generally do have a good relationship with both agencies. They do a pretty good job of investigating these crimes and if they don't we can always send it back for further investigation.

I have a great relationship. They don't bring me good cases, but I have to make them good. They love me and they hate me because I make them work. They do seek me out but they know that when they do, I will make them work. We work as a team and they get what they ask for: lots of work.

It is very good. We work well together generally. Occasionally I come across a detective or two who need to be educated about the type of evidence we need. But we understand that they are looking at it from a policing standpoint and we are looking at it from an evidentiary standpoint.

Cooperative. We have a very good relationship with the Sheriff's office. They will call me before the case is going to be presented and ask me for my advice on the investigation. It is a very, very good relationship.

I feel that they want us to reject cases. In one case the detective came in and said that there is no corroboration but when I interviewed the victim I found out that there were three types of corroboration.

Sexual crimes and domestic violence are the most nuanced and sensitive cases ever. People have gang fever but sex crimes are so subtle. When you get detectives who are there to seek the truth rather than have an agenda. It's horrible when a detective says 'She really got raped.' The LASD Special Victims Bureau has a lot of experience. They know how to ask questions to create a scenario that is safe. You have to pursue every little statement.

LASD I've had a great experience with. Special Victims are great, thorough, compassionate, and they do all the different things you want them to do. They've done the pretext call, re-interviewed the victim, Mirandized the defendant, and recorded it, not just written it down. In this day and age you have the ability to do and don't explain that to the jury. Only thing [I would advise law enforcement]: if you've asked them if it's happened before and there's time, ask more about the prior incidents. Don't just gloss over it because that can affect a DA's filing decision. Honestly, we do more DV than anything else. And with younger victims don't ask how many times. Patrol officers with kids will take the basics and get it to Special Victims. But with adults they are skeptical.

I believe LAPD is not as well trained as the sheriffs. The Sheriff's Special Victims Bureau is more well trained. They've been doing it a lot longer. Perhaps it's a resource thing. LAPD does not put in as much effort pre-filing.

I think that I have a fantastic relationship with most of my detectives. Most do a fabulous job with their investigations, but like anything else there are some who are better than others. Right now, LAPD has serious budget restrictions and detectives are limited in terms of overtime. Things will start falling through the cracks if you have detectives who can only work 9 to 5. This is not a 9 to 5 job.

Overall, the prosecutors interviewed during this study reported having good relationships with law enforcement. Consistent with the assertions of law enforcement interviewees, prosecutors emphasized that an individual must want to work sex crimes; otherwise they will do a disservice to victims and to their respective agency. They reiterated the importance of the first contact with victims, and the potential damage to an investigation if criminal justice system personnel who work sex crimes do not have effective interviewing skills and produce written documentation that is biased and unprofessional. While some interviewees mentioned specific LAPD divisions as exemplar, LASD's Special Victims Bureau was consistently described as the most professional and comprehensively trained sex crimes unit that conducts the most thorough



investigations. However, as discussed in Section VIII, LASD's Special Victims Bureau only investigates sex crimes involving victims age eighteen and younger to date; all other cases are investigated at the station level by non-specialized detectives.

## **PRE-ARREST CHARGE EVALUATIONS**

I don't think it's so much unique to sex crimes. Some detectives think it's a borderline case so they wait to see what the DDA says. Others will make the arrest and want it in the system. We don't advise them one way or the other so it's left to their discretion. After we have rejected they cannot make an arrest. That's why when they bring it in when it's not in custody we file for an arrest warrant. If I do a reject it's for further investigation.

This section focuses on how prosecutors make charging decisions in sexual assault cases. It begins with prosecutors' statements in response to questions about the LAPD and LASD arrest rates for sexual assault from 2005-2009, and is followed by a discussion of the pre-arrest charge evaluation process.

When interviewees were asked why they thought the LAPD and LASD arrested fewer than one-third of the sexual assault suspects from 2005-2009, responses ranged from a focus on the types of cases that get prosecuted to acknowledging the pre-arrest charge evaluation process. As discussed earlier, responses that explain arrests vis-à-vis prosecutorial filing decisions, in effect, are asserting that within this process law enforcement base arrest decisions on a proof beyond a reasonable doubt standard rather than probable cause. Consider the following:

You would have to ask the police why they do that. It is not something that we require. They might be afraid that they don't have probable cause to make an arrest. A lot of times they are not arrested because the crime has not just been committed. There are times where the suspect not being arrested is good. A suspect who does not know that there is an investigation going on means we can do a pretext phone call and get the suspect to admit what happened. This can make what would be a very weak case a very strong case.

You would have to ask the police that question. Every case is different. Often there are cases where the suspect is in the wind and they can't find or interview them, so they present and if we have enough then we file for a warrant.

Very often the police officer will present the case to us before making an arrest. If we don't believe that it is fileable, an arrest won't be made. There isn't any point if we aren't going to file charges. If they have probable cause to make an arrest, they can go ahead and do so and then present the case to us for a filing decision.

I am not there when they make that decision. Once they make the decision is when I get the case. I suspect before they can take someone's liberty they have to have probable cause to arrest and often you can see the case taking shape early in the investigation so if you're experienced and you see it will not go anywhere then you don't make the arrest. We don't want to push people around and get involved in their lives because we do not have that right.

The victim not wanting to prosecute is a big factor. I know that the LASD administration frowns on detectives when at the sergeant level they will decide not to take something to the DA's office because it is so clearly a reject that they are not going to waste our time. Certain stations will do that; it depends on the sergeant and the detectives in that section. I'm surprised at that number [percentage of sexual assault arrests for LAPD and LASD]. I would think that it would be a higher number.

I think because part of what they do in sex cases with known suspects is they FAX something over and I ask when are we doing the interview and they will say she is not going to cooperate. So if they know we won't file then they don't arrest.

A lot of these cases where there are children are based on delayed disclosure. If it is presented for warrant and there is not enough evidence then no arrest is made.

Once it gets to us it's already been reported. We have to deal with the victim recanting and ensuring the process.

I don't know; unless it is something that reflects on their training and their knowledge of what to do. I have seen a problem where they do not always recognize that things need to be cross-reported or that we need to review certain files because we can request further investigation that would result in a filing.

I think it is low because the victim does not want to prosecute and it goes along with minimizing the conduct. That's the biggest drawback of our job.

Cases involving children are very difficult, as are the spousal rape cases. All of the cases we deal with here are difficult cases to prosecute. The kid cases are difficult because often the kids cannot articulate what happened or don't have the language to explain what happened to a judge or jury. The spousal rape cases are difficult because of the

possibility—probability—that the victim will get cold feet and will either not show up to testify or will recant her testimony.

Lack of willingness to convict on the part of jurors. The same people who bang their fists down and rant and rail about violent crime won't convict without solid corroboration. Judges also make some bad calls. It makes prosecutors more conservative in their charging decisions.

If they don't go out and arrest right away there is a lengthy process for both departments and it takes a while for the case to get to the detective who is going to investigate it. They have to do triage. What we prefer is for the detective to come in before they make an arrest so that we can see what the case looks like. In a lot of them there is no corroboration and you are looking for something that you can shore it up with so that we can file it. But we can't tell them how to do their jobs. They decide whether to make an arrest or not.

The ones without any corroboration. That could be any number of things. If it is a rape and there is no physical evidence. The victim said it happened but there is no statement from the defendant and no other type of evidence. We don't file those.

They can't find the defendant. We get a lot of cases brought in for a warrant where they have not been able to locate the defendant. In many times they have left the country. If we reject it, there won't be an arrest. They do not do an arrest unless it is a crime that has just occurred and unless they have a chance to talk to the perp. If they are not able to get statements or corroboration, no arrest will be made because we will end up rejecting the case.

Prosecutors were then asked whether pre-arrest charge evaluation is standard operating procedure in sexual assault cases.<sup>105</sup> With few exceptions, consistent with the LAPD and LASD detective interviewees, all agreed that it is standard procedure. Many emphasized the DA's office has a policy that requires a pre-filing interview with the victim in sexual assault cases, which can be bypassed if there is "strong corroboration" or if the suspect is a "threat to public safety" and an arrest is necessary:

If we reject at the pre-filing interview, they usually won't make an arrest because we won't be filing the case.

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<sup>105</sup> The exact question was "Our review of the LAPD and LASD case files revealed that many sexual assault cases are presented to your office for pre-filing consideration—that is, the police know with some degree of certainty who the suspect is but they will not make an arrest unless the DDA reviewing the case indicates that there is sufficient evidence to move forward. Is this standard operating procedure in sexual assault cases?"

That is a good question. It happens in other areas of criminal prosecution also over the years. If a detective is having a particular problem with deciding where to go next because maybe it is drying up and they want to bounce some ideas off the lawyers they will call and in that sense it is a pretty informal relationship. They will call and ask advice, run a scenario by me and ask what I think. It is one way for them to clear a case in doing everything possible to ensure they are doing it right. The difference for us is if they have made an arrest we have forty-eight hours to make a decision and unfortunately many times they do not get to us and sometimes in the morning we are scrambling to get a lawyer on it to do the interviews. We do not have a lot of luxury once they make an arrest and in many cases they could have waited.

We are required to do a pre-filing interview with the victim in a sexual assault case. I don't believe that this is required and I don't think that it happens in other cases such as robberies and burglaries. The reason why we do the interviews before they make an arrest is that we like to have these cases worked up before an official arrest is made.

It depends. If the suspect is in custody we have two court days to arraign him or let him go. In those situations we have to make the decision immediately. If the suspect is not arrested and the law enforcement agency does not feel the person poses an immediate risk to the community, they will allow the DDA time to look at the case. The most important component there is if there is any type of investigation that they feel should go on to make the case stronger then they can ask them to do that such as a pretext phone call. If the suspect is in custody then that is not readily available.

In sex cases we have our policy to interview the victim. Sometimes they are hoping to bring it to us so we can give them ideas about how to make the case fileable. They do not do it right away as soon as it hits their table. When working in [another area courthouse] we did rollouts where we went with them and that was better because we were there from the start and could guide them. It's helpful for our overall approach.

Sometimes they come in custody. With kid sex cases the way it comes out, it's been going on for a long time, or it just is coming out for the first time and it's been a while, so it comes to us for a filing warrant and then they arrest. It depends how it's reported. If it's not reported immediately they won't arrest when it's not seen as an urgent part of situation. It's more children cases unless in the context of DV.

Yes, especially in cold hit cases. If we have DNA identified they'll bring it to us prior to arresting them. I think it's because we have only forty-eight hours to file and they want to ensure that they have all of the information and the suspect won't know that we're on to him because otherwise we'd have to release him.

If they know who the person is, if they arrest him it's the same thing; we'd have to

release them. [My supervisor] does most of the filing, but in acquaintance cases a lot of them are like that where the person is not arrested before the filing. A lot of that has to do with delayed reporting, so it's not like this just happened and we have this person on the loose and we need to go get them this minute on the loose. That's another thing we have to deal with juries and late disclosure. They expect someone who is raped to run to the hospital and report immediately. Sometimes, I mean, if they say it's my neighbor, or it's my friend's cousin, they will arrest, but if we can't find them then they present for warrant. They should arrest. Sometimes they will want to do the pretext call first. They will not want to wait on my interview because public safety is critical so they will make an arrest. They can arrest with probable cause but in my experience they usually don't. It depends on the case. Delayed reporting requires further investigation.

Yes. You have to consider the crime. If there is no fear that the defendant will flee we need to interview the victim to gauge the case. If we arrest the suspect and do not have a strong case why not do it for reasonable doubt versus probable cause? What if they make an arrest and the girl isn't competent to testify? This occurs in sex and DV; I can't speak about the general DA's office. I know that generally police officers bring in cases for filing. The policy manual says if we have an opportunity to interview the victim before filing then do it. Sometimes not all cases are provable, for a variety of reasons. Examples: sometimes witnesses aren't credible. There may be a history between the defendant and the victim and you have to figure out what's really going on. Sometimes you may not have physical evidence; sometimes stories aren't that credible. Pre-filing interviews allows you to cut through all of that and allow you to develop rapport with victim. Our office policy looks for corroboration. It doesn't mean we don't believe the victim, but personally I would prefer corroboration in order to assist in getting a conviction. I don't have an opportunity to talk to the defendant.

That's our preference, but obviously if they need to arrest him and think it is a safety issue OK, but it's better to bring it to us. This is unique to sex crimes and some DV.

We have a policy that when at all possible to do a pre-filing interview of the victim with the prosecutor. If no named suspect it's for a warrant. And no, that is not standard procedure; much more often than not they are in custody. If they are at large and in hiding we will still file because then there is a warrant for arrest in the system. Generally that is true due to lack of safety for the community and the chance of running, so yes, the suspect should be arrested.

Yes. The defendant is either in custody and the file is presented to us within forty-eight hours. Or, if the case is presented without the defendant in custody we have more time. That is a standard policy.

It does happen often, but it is not necessarily that meaningful. Sometimes an arrest is

made right away and we have shorter time. We always interview the victim before filing except in extreme circumstances such as he confesses, or there is strong corroboration. In that way we are normally consulted, or I attend an interview if it is a child under eighteen. Sometimes they will seek guidance such as what do you think.

Yes. [The VIP Deputy in Charge at my Branch] does filing but brings us in. S/he makes the ultimate decision because s/he is the boss. There have been times where s/he has called me into the office and said 'They're asking whether they should hook up the guy or not.' This happens usually when there's not much evidence such as in child cases. Most often detectives will call and ask if we should do a pretext. Usually we do not file cases unless there's corroboration. They'll say do we do a search warrant, what to do, etc.

Here we work with detectives at the beginning of the case. We talk to the victim and get a sense of what happened. There are occasions when the defendant is arrested ahead of the time. Often in these cases it kills the case if we arrest them. Often we do pretext calls. We've had victims wired before and do a meet-type situation. There are people that can be interviewed before the guy is arrested and they'll speak more freely that way. We don't say 'Don't arrest. The case is over.' The very last thing we do is interview the defendant. Once he's arrested the only thing to do is interview. Detectives will invite the suspect to the station and not arrest but interview the defendant. Otherwise some will say I will arrest because I have probable cause and Mirandize him; or they'll say I don't think anything is here so I am not going to arrest. I never reject a case if the defendant isn't interviewed. The only time is if they flee. I would consider filing for a warrant but if the defendant is unavailable then I wouldn't. Especially if he does it again, you have a statement, a pattern, and you can lock him in a story. There's a clash sometimes between the different service providers. There's the social worker advocates, DAs, and police officers. They [the police] often want to stop if they feel a case won't go anywhere. DAs will say if you do these things I can make a case happen, but then there are social workers saying we can do fifty other things to make this kid's life better. We've all been trained to do it differently and sometimes there are different places where we all draw the line.

It's only in sexual assault and not a constant in other crimes. The police do their investigation and they then arrest for probable cause. They walk into my office with a file and want a ruling. You either file because it meets filing standards, or you reject it. The policy is that every sexual assault victim must be interviewed. We have to talk to the victim and know what's going on in this case. There are situations where they make the arrest first because the victim is in danger because the suspect resides with them and has access to them. If the dad is molesting and the kid reports at school you're more likely to arrest dad because the kid can't go home safely with the father in the house; or in a stranger case, because we can't risk not knowing where that person is. One of the main reasons we don't want them arrested prior to us having input is it destroys potential investigative strategies. It impacts our ability to get a pretext phone call. So typically we

say why did you arrest him? You blew the investigation. A thirteen year-old having a sexual relationship with a twenty-five year-old, technically that's a molest; they're capable of doing a pretext saying we shouldn't be doing this anymore. Forty-eight hours is a ticking time bomb. They're [suspects] less likely to make a statement once you've arrested them. It's better when it's more casual and they still think they can get out of trouble. They're stupid because they think they can say consensual and that's easier when they voluntarily come in street clothes. It's [pre-arrest charge evaluation] not happening in general crimes, but perhaps in special unit cases where they are unique such as Justice System or Public Integrity Division. You want it to be coordinated. Paper cases, major fraud cases, they wouldn't arrest without typically bringing to the DA. You're not going to have a robbery defendant be an out of custody case because it's a violent crime. In lower level crimes a lot will be out of custody because they're bonding out of custody anyway.

Prosecutors were then asked whether the pre-arrest charge evaluation occurs in other types of cases. Those who stated it is not unique made statements such as "It does happen in murder cases also," "It happens in all types of crimes," "Drug cases and robberies," and:

It happens when they are not sure if they have enough to move forward. They come to DAs to ask pointers about how they can make the case stronger prior to making the arrest. The investigation will be impeded if they make the arrest and if a suspect knows they're a suspect. I notice it in homicides where you may have more than one suspect and sometimes they'll come and say we have enough evidence for one suspect but what do you think about the second to see if there's anything we can do to make the case stronger for the second assailant.

Another began by stating, "In sexual assault cases it happens very rarely. If it is known that it has happened and the victim and suspect know each other then they need to immediately remove the person and take them into custody." Counter to the previous statement, s/he went on to say that "In stranger cases and drug facilitated sexual assault we let it sit for a while to let the suspect forget about what happened and then do undercover to try and get him to make some statements. In situations where the suspect does not pose an immediate risk to the victim it allows for extra

time to do a thorough investigation.” The remaining prosecutors emphasized that it happens only in sexual assault, and—to a lesser extent—domestic violence.<sup>106</sup>

Not domestic violence. In domestic violence the deputy goes to the scene and they make an arrest. It only happens in sexual assault. I wouldn't say it is informal. They bring it in for a filing. If we file, we file for a warrant and then they can go out and arrest them. With robbery, for example, you are more likely to have immediate reporting and evidence of a robbery. The person will have the evidence of the robbery, and they will probably spend the money if we wait. It is unique to sex crimes and part of the reason for that is there are women who will say because they're upset that hey this happened and you don't want to run out and put someone in jail, especially with late reporting. They want to make sure they're not arresting someone just on someone's word. With domestic violence cases there is already corroboration built in with the frantic 911 call. If a rape was reported via 911 it would be the same way.

Robbery or burglary would not have this. This is unique to sex crimes because we have specific filing standards and the nature of these cases is they are harder to prosecute. We have learned a lot since the Mc Martin case. We do have specific filing standards because there are inherent difficulties. I have very few if any sexual assaults involving adults. It was shocking to me that the majority of my cases are children under twelve.

[Arrest is the] worst thing to do as long as the victim is not in danger. Some detectives are good and they break the guy down before coming to me. Polygraphs are spectacular. With acquaintance rape, if he argues consent: are there witnesses? They don't arrest in these cases. Strangers you have to pickup immediately because of public safety. If an acquaintance you have to consider the practicality of winning that case. Does she have torn pantyhose? Does she have injuries? Does he have power issues? Have they had consensual sex on other occasions? If torn things the police will arrest, or if the suspect is a flight risk. In a sex case, unless you have DNA they won't arrest, unless he denies it,

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<sup>106</sup> Sexual assault involving intimate partners meets the criteria of both sexual assault and domestic violence. When sex crimes and domestic violence are conceptually and practically responded to as distinct, the unique issues specific to intimate partner rape victims are often misunderstood and unaddressed (see Berman 2004; Tellis, 2010). A tragic example of this was the *People v. Curtis Bernard Harris* case, which was handled by the VIP Unit of the LA County District Attorney's office in 2007. The defendant—who had two prior felony convictions—kidnapped, drugged, and physically and sexually assaulted Monica Thomas-Harris, his ex-wife. Among numerous lapses in the chain-of-command in this case, the assigned VIP deputy did not: (1) file a charge of spousal rape or the most serious gun allegation available; (2) prepare a criminal court protective order to be filed with the case; (3) notify Mrs. Thomas-Harris that Mr. Harris had been released on his own recognizance for 30 days prior to having to serve a 16 month prison sentence for False Imprisonment and Possession of a Firearm as punishment for his crimes against her. On January 5, 2008, Whittier police officers were called to a local motel by employees and discovered the bodies of Monica Thomas-Harris and the defendant in a motel room as a result of a murder-suicide (S. Cooley, Review of the Prosecution of the *People v. Curtis Bernard Harris*, Case No. KA081214. Findings and Recommendations. Available online at [http://da.lacounty.gov/pdf/harris\\_report\\_final\\_6\\_03\\_08\\_small.pdf](http://da.lacounty.gov/pdf/harris_report_final_6_03_08_small.pdf)).



it's a stranger, she has massive injuries, tearing, or he's one of these people who leaves the bite marks, etc., but that's more the stranger. But with acquaintances what is the practicality if trying to help the victim? It's nice for her in larger sense that he's arrested. But it doesn't assure a conviction, especially if he's saying consent. If you give me a fact pattern that tilts in our way I would suggest they would arrest them right away. Some younger officers arrest immediately. The truth is it doesn't guarantee a conviction. Most police officers bring the case to me because they'd rather have me say no [to the victim] than them say no.

It depends how serious the crime is. I don't think so usually. In serious cases, murder, again, because if you catch the murderer there's someone who's liable for it. Or they'll ask if they should get the guy. Usually in those cases the defendant is caught.

It is unique to sex crimes but more so with vulnerable victims: kids, elders. There are certain cases that would also apply, but auto theft and robbery there are so many it is physically impossible to do with most small time cases given how much in depth [work] is required. Are DAs consulted on very complicated identity theft cases? Yes, in big Ponzi schemes, etc. Certain murder cases, yes, they are also consulted, but for the most part in sex crimes and kids cases we're consulted because they're secret crimes. It's not like kids or women are raped in Dodger stadium and I think that's why that goes on. You can have identity theft and they get their credit cards back, but with these crimes they never get it all back so we try to do the best we can for them to get justice.

Generally they do that because most of the cases are going to require further investigation and they want some guidance on what will be needed to put the case together. We have a very narrow window in which to file if the suspect is in custody. On occasion, if the suspect is in custody he will have to be released because we don't have enough at that time to file charges. We don't want to tip our hand and let the suspect know that he is under investigation. If he doesn't know that he is under investigation, he doesn't have time to come up with a story or an alibi. We need the time to put the case together because most of them are one-on-one situations.

Office policy is to do a pre-filing interview with the victim. If there is no concern for public safety and the suspect does not have a long history of violence, we like to have the interview before the police make the arrest.

There are some exceptions but the general rule is to have an interview with all victims prior to filing. The exception would be cases where the victim lives out of state or where the suspect is in custody and we have only forty-eight hours to file charges. Also, if you

have a very strong case you may not have to do the interview prior to filing. All cases involving children and acquaintances, I believe, require the pre-filing interview.

All cases are presented to us. Our office policy for DV cases and for sex crimes is that we are supposed to do a pre-file interview with the victim to assess their credibility, give them information on Marsy's law, refer them to victim-witness services,<sup>107</sup> and gauge whether they are going to follow through. We don't want to file a case and then have to dismiss it.

It happens also in some other types of cases. But we can't tell them what to do. They can make an arrest without approval from us. Because of the pre-filing interviews, it happens a lot more often with sex crimes. If someone is in custody, you have a very narrow window, only forty-eight hours to file charges. If he is not in custody yet, we have more time to make sure that the case is solid before an arrest is made.

This is unique to sex crimes as far as I know. I don't know of any other unit that does that. Sometimes they will make the arrest and bring it to us. We have a case now involving a teacher who is accused of several crimes over the years. He was arrested and presented to our office, but we did not think that it was ready for filing. We sent it back for investigation and then later when the case had been developed, we did file the case.

In summary, prosecutors described the pre-arrest charge evaluation process as a result of the policy requiring a pre-filing interview with sexual assault victims. They also described it as helpful to build cases that require more investigation and evidence accumulation to support a filing. While interviewees emphasized that they do not control law enforcement's power to arrest, they distinguished a need for an immediate arrest based on the community's public safety concerns. As has been repeatedly demonstrated both explicitly and implicitly during the interviews conducted during this study, in the realm of sexual assault, public safety concerns continue to center primarily on stranger rape despite it being the least frequently occurring form of sexual assault. And as an interviewee above indicated, pre-arrest charge evaluation by DAs is standard in nonstranger child sexual abuse cases given the ubiquity of delayed reporting and the need to sufficiently work up a case given there is only forty-eight hours to make a filing decision

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<sup>107</sup> It is important to note that victims are only eligible for the victim-witness services referenced therein if criminal charges are filed by the DA's office.

once the suspect is arrested. However, while criminal justice officials acknowledge the similarities between child and adult nonstranger sexual assault cases in terms of delayed reporting and the evidentiary challenges, evidence collection protocols with adult victims are not streamlined in the same way that they are with children.

### **Bounce backs to law enforcement for further investigation**

Before transitioning exclusively to prosecutorial discretion in filing charges and the associated courtroom issues, interviewees described their experiences with having to bounce back cases to law enforcement for further investigation:

The police look at things one way and we look at it from a more legalistic point of view. Sometimes there is an overlap but often there is a difference of opinion.

If the victim is unavailable, like out of state and refused to come in, we do a 'detective only.' We send the detective to do the interview. We won't interview if the victim out of the gate is saying they don't want to be interviewed. Then we would send the detective out to confirm they are uncooperative at the gate. They all are reluctant and don't want to; it's a question of will they.

I'm typically leading the investigation in the first place. I make a list of what I want done. The time frame is unique. We try to interview the child as quickly as possible. After we interview we all meet and try to decide what the smartest investigation is, such as a pretext, a search warrant for DNA or for a computer for porn or instant messaging. Whether we already have enough evidence to make an arrest and file the case, I write down everything they need to do such as investigate the suspect's priors. And good evidence is 1108 propensity evidence because it is enough to corroborate. We do further on every case. That's not normal anywhere in the office. That's only with sex crimes.

That happens in two out of ten cases. It is usually for not speaking to enough witnesses, or not collecting another piece of evidence, corroborative evidence. I find that in domestic violence there's less investigation and less work done. I just think LAPD puts better detectives on homicide and sex and those who don't do anything right go on the DV table. Once in a while you get someone good. Sometimes there are fantastic detectives and they leave, or the ones that are there have been there forever because that's what they like and they want to do and it's what they care about. Instead of transferring people around based on where they need a body they should put people on the tables they care about. There are certain women who love DV; they investigate almost too much and they come in with a lot. They care about women and they don't get annoyed. It's more often women than men who have more sympathy. The LAPD detectives think the women are getting what they deserve based on choosing bad men. You need to care for people

who can't care for themselves. Some of these women have less self-esteem and brainpower than a kid. They're like kids, and you need people who care about these types of victims and cases. This global organization of globally putting people in places to fill needs is critical. It's night and day the detectives who care about DV. The men make great sex detectives, and the women are better with DV. People have less sympathy for people who choose the bad person to have the relationship with. And it's true, you're partially responsible, but it doesn't give the people the right to victimize you.

If a case is weak and could potentially be made better we will refer it back to the police for further investigation. For example, if there is DNA testing that can be done or if witnesses might be able to provide corroboration.

It happens pre-filing. More often than not we file because there's enough but then we'll ask them to do x, y, and z. There are always ongoing discovery requests.

Yes, specifically with adult sexual assault. It's pretty rare with LASD's Special Victims Bureau. Maybe with acquaintance rape if the victim is saying it happened this way and the suspect is saying something different. We'll ask them to follow up with the people who might have seen the suspect and victim prior to the incident. Sometimes we pick up on things that maybe they didn't think of.

Once or twice I have, but not often. Pretext calls were needed, or they needed to talk to him again, or do more interviews of different witnesses to corroborate the victim. We work with LASD's Special Victims Bureau because they are really good. They are not your normal patrol officers off the street. They know how to talk to these guys, what their profiles are, and how to get them to talk.

Yes. In sexual cases sometimes we'll need them to talk to a fresh complaint witness, or to collect evidence that can provide samples, or interview witnesses.

This happens with many cases, fresh ones; about 60 to 70 percent of the time.

Typical things we ask an officer to do depends on what I think is missing from the case. Recently I had one that someone else had rejected previously and I saw that if they found DNA we could prosecute. It was a known suspect, not a stranger. The DNA took two years.

We can reject for further investigation. We are typically asking for a pretext call with the suspect and physical evidence that can be used to corroborate the victim's statement.

The pre-filing interview is in our legal policies manual. We are supposed to interview victims in sexual assault cases. If there is independent corroboration and time constraints sometimes we will not do that. In that situation I will do a post-filing interview.

Sometimes what they will do is if they arrest him they will bring us the case and we will do the pre-file interview within the forty-eight hours.

If it is a one-on-one, the defendant will make statements that indicate the victim has a motive to lie. We will want the investigator to interview witnesses to corroborate the motive. There might be witnesses who need to be interviewed or physical evidence that needs to be preserved.

You need to evaluate the victim. Can she handle the case all of the way through trial? I want to hear the story from her mouth. The detective will ask questions from his point of view and we will ask them from our point of view. Does her story make sense and can we prove it beyond a reasonable doubt to a jury?

Oftentimes when the defendant is arrested, before we file the case we do the pre-filing interview. We have the forty-eight hours in which to decide what charges to file. During that short period of time we try to get the victim in so that we know what we are dealing with.

This section has examined how the prosecutors interviewed during this study describe their working relationship with the LAPD and LASD in the prosecution of sexual assault in Los Angeles County. It provided further context to the pre-arrest charge evaluation process but from the perspective of prosecutors who attributed the evaluation of cases prior to arrest to the consequences of delayed reporting, policy that dictates that cases only be filed if there is proof beyond a reasonable doubt, and office policy that requires a pre-filing interview with victims of sexual assault to ascertain whether there is independent corroboration that a sexual assault occurred. They stated that although pre-arrest charge evaluation would be unlikely in a stranger rape because the victim's credibility is less likely to be challenged and the perceived threat to public safety would translate into the police making an immediate arrest, they do not control arrest decisions of law enforcement and that discretion to make an arrest rests solely with law enforcement. The next section transitions to how individual prosecutors make sense of and account for filing decisions in sexual assault cases.

## **PROSECUTORIAL DISCRETION IN FILING**

We reject because of a lack of corroboration. Rape law reform was more symbolic. We can't file without independent corroboration otherwise it is he said/she said. It doesn't have to be huge, but it has to be something such as an admission, physical evidence, a witness, DNA; something.

Prosecutors were asked about filing procedures in their office and whether charging decisions are based on a standard of probable cause, proof beyond a reasonable doubt, or something else. Although all affirmed that proof beyond a reasonable doubt is the agency's filing standard and the VIP program is philosophically grounded in the notion of vertical prosecution, many noted that in practical reality there is variation in how filing procedures work by branch and Deputy in Charge. For instance, a prosecutor stated, "The Deputy in Charge (DIC) is the filer in VIP. I've been involved in the task force for all of LA County and listening to DICs from other areas it's done differently in each office. I think there were between twenty to twenty-five trials last year. I did nine trials for VIP; that's a lot. Please, I don't think our office necessarily has guidelines in terms of what cases need certain dispositions and vice versa. Whereas one VIP DIC might think one thing, another might think differently. It depends on the Branch." Interviewees also evidenced variation in their descriptions of the factors that would incline them towards a filing versus a rejection. Some emphasized that it is unfair to put a victim through the trial process when they are unlikely to win, whereas others emphasized that victims deserve their day in court and lamented that many DAs decline to file unless it is a "slam dunk" case.

## **CASE ATTRITION: BELIEVABILITY VERSUS CONVICTABILITY**

We begin by describing some of the variation in filing procedures that were described by interviewees:

In my unit we have a DA screener so that clear rejects are taken care of on the front end. If it's a close call or clearly a filing then it gets assigned to do a pre-filing victim

interview. We see a lot of attrition with adults and that's because victimization is looked at very negatively in society. What often happens in jury trials in sex cases is jurors will approach the bench saying they were molested. In terms of our [their Branch] rejection rate: the majority of cases are rejected at the pre-filing stage. Sometimes they are rejected outright because there just isn't anything there that we can work with, but other times they are rejected for further investigation. I would say that 80 percent are rejected at the pre-filing screening, most often for further investigation.

It's harder sometimes not to file even though you feel in your gut the person did it. You have to think if this is me with my case am I going to be cursing the name of the person who filed it because things happen and you don't always end up trying a case that you filed. If you're looking at it thinking I can't prove it even if I believe it, it's a harder decision to say I'm going to file it. Maybe they'll [the police] come back later and have found more evidence.

If we do a victim interview on the case, we do keep the case, whether child molestation or adult sexual abuse. We have a board where we keep all of our cases based on experience and caseload. If a detective calls with a case, our supervisor will look to see who is experienced and who has the time, based on caseload, to do it.

All cases go to the coordinator from the start. S/he evaluates it and who will take it. By the time we get it s/he has her own ideas about it and then we do the interview and usually we confer to ensure we have thought about all of the different possibilities and select the charges. We see everything. S/he does not screen the weak cases out. [The supervisor's] philosophy is that when you read something on paper and speak to the person it could be different. We've had cases where they say this victim is a mess and won't talk, but when you actually do the interview she is willing to speak. Ordinarily they say if the victim doesn't want to interview then reject it outright, but by going back and seeing the suspect's priors you have to speak with people. You have to learn to evaluate. There is a philosophy about don't waste your time, but there is something valuable to talk about a case and consider the angles. At [one Branch] there is a caseload of thirty-five active cases plus there is high turnover of DDAs. When you aren't struggling with your basics you can focus on actually trying. When you aren't worrying about elements of the case, PowerPoint, etc., you have a chance to go beyond.

When an officer comes in for filing, here in this unit we all have days where we file. We review the report and decide whether to file charges or not. We have someone who does nothing else other than screening. If we have done the interview with the victim, we are filing for ourselves; that's vertical prosecution. If there are other DV counts we might be filing it, but it might be going to Central or it might be assigned to someone else in the office.

I do make filing decisions. [DIC of the unit] is our VIP coordinator and does the bulk of our filings. We do our own interviews, but sometimes we get cases filed by [the supervisor] and assigned to us. The trial I did was originally filed by someone else who

happened to be transferred. We try to keep cases from the onset. It's not a perfect science but we try.

Since we do vertical prosecution, we look at it from the perspective of taking the case to trial. We want to make sure that we could get a conviction at trial. I don't want to put the victim through this if there is not a good likelihood of conviction. After filing, we own the case so we take the filing decision very seriously.

I screen all of the cases that come through here. If it looks like it may get filed I assign it to one of the lawyers and they will do their own interview and they will make their own decision as to what to charge. We have been having a lot of discussions lately about pimping and we do not see a lot of those so we are brainstorming about those. If it looks like it won't get filed I reject it. If I reject it I tell the I/O<sup>108</sup> they can have an interview with me if they want. About half want the interview. Essentially, what happens is I point out what the problems are.

[My supervisor] files the bulk of the cases, but we are assigned our own pre-filing interview. If I do the interview it is my case to file or not. We look at the defendant's record, the victim's record, the victim's credibility and motive to lie, and whether or not there is independent evidence, such as DNA evidence from the SART exam, that is consistent with the victim's story.

We interview all victims in cases that are not rejected outright. I am the gatekeeper and distribute from there. During the pre-filing interview we look at the victim's demeanor, at how consistent they are. The presence of inconsistencies does not mean that they are not credible but we do have to evaluate; evaluate whatever motive they might have to lie. If there was a delay in reporting what was the reason for the delay? When it is applicable, did they submit to a SART exam and how thorough was it?

Everyone files here. We all talk about our cases. We're all here next to each other and file cases. There's more group consensus here than at many places. Here we get everything that comes through, we screen it, and we set up an interview. We interview almost everyone that comes through here. Cases that would get rejected immediately [at one Branch] are getting interviewed here.

We have filing DAs and there are people assigned to filing. Everyone takes turns. My caseload is fourteen, but in VIP it was twenty-two.

Law enforcement will come and see our VIP supervisor. S/he will review the case. S/he can reject outright, send it back for further investigation, or can go ahead and file it. Typically, s/he will say that I need to interview the victim and I will give my input as to whether it is chargeable or not, and, if so, what the charges should be. There are times when we will file our own special cases but s/he does 95 percent of the filing.

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<sup>108</sup> Investigating officer



Any case can be rejected for further. I couldn't give a percentage of cases we reject. I feel like we reject a lot of cases but we file a lot also. Someone who does the screening said it is 50 percent or higher. Every unit has a different procedure. For example, [one branch] had one sole screener, but here that is not what is happening. I screen everything and then distribute, but that will change. Sometimes if I read it and see there's not much I may interview the victim to see if she can carry the case. I think a lot depends on staffing allotments.

The following statements transition from a focus on who does the filing to the factors that influence whether charges will be filed by the prosecutor:

It is a fine line in deciding what to file. Who is your target audience? A case is a case is a case. This type of conduct with this type of record is a filing, which is different than saying jurors in some areas would agree with whipping whereas in other areas it might be time out.

Our standard is proof beyond a reasonable doubt to a jury. Most cases don't go to a jury. Most cases get settled after filing, but if we have a standard less than that we're not following the law. I don't think they'd want taxpayer dollars wasted on something we can't prove. Our law says someone is innocent until proven guilty.

Proof beyond a reasonable doubt. We cannot file a case by policy unless we believe we can prove it in court.

To file in he said/she said I would need corroboration of the victim's story. Sometimes we have some. If the victim is alleging she was forced or drugged—that's the usual scenario: 'I was drunk and unconscious.' We would need something to corroborate that. If she says she would not have slept with him otherwise, well, all of those things are very difficult to prove. The problem is someone who is drunk and unconscious wouldn't have any signs of force such as defensive wounds, etc. Let's say we get a semen sample. Well, the guy will say it was consensual and that is the classic he said/she said and it is very difficult at that point. A lot of those cases do not get filed. I've seen lawyers try these cases. We have one lawyer here one and half years ago who got a conviction. There were these photos of the victim at the party flirting with men, and she was dressed provocatively. The DA got a conviction but the judge overturned it. The judge felt the suspect did not take advantage of the victim. It might have been a male bias but the judge honestly felt this was not a rape because of her conduct. It was very sobering.

Just having the elements is insufficient. They have to be proven beyond a reasonable doubt in front of the jury. I need victim credibility. How does she talk about what happened? Is there a child custody issue brewing somewhere in the background? Is there a history between the suspect and victim that needs to be known about? Is there corroboration? Witnesses? DNA? Physical injuries? Can't do it on just elements alone.

There is a wide range of DDA interpretation as to what sufficient evidence means and when a conviction may result. I will say this because it is anonymous that there are people attracted to sex crimes because you can get high sentences, and they reject ones that are not a slam-dunk.

Things change along the way. Cases can get better over time or significantly worse over time for a variety of reasons. All of this affects plea negotiations. A plea is seen as a bad thing, but there is such a thing as people accepting responsibility, and the earlier they do the better. Not that you want to punish someone for going to trial. If things come out on the stand the anguish is worse on someone's face so if going to trial it can be a worse sentence. You file what you see is there.

We have to believe we can prove this case to a jury beyond a reasonable doubt. It has to be based on what a jury would say. Our ethical duty is we cannot prosecute a case we don't think we can prove beyond a reasonable doubt. In a lot of he said/she said cases in a pre-filing interview with the victim I truly believe them but I don't think I can prove it to a jury. I tell them it's not fair to them to put them through the process if I don't think we can win. It's very stressful and emotional, and to put them through the year the case is pending and to have a jury come back not guilty, then they're not just a victim of the rape. Then a jury is saying we don't believe you were a victim. I don't think that's helpful to them. We want to put someone through it if we think we can get justice for them.

Beyond a reasonable doubt; a jury trial standard. If it ever starts to look like a he said/ she said I may have to reject it. I may believe the victim but the jury instructions say if two people are saying the same thing you have to give the defendant the benefit of the doubt. In essence, if you take the jury instructions in their totality, if you hear him saying one thing and she's saying one thing, and I don't have a witness or direct evidence, they have to take his side. I have to think from the basis of proof beyond a reasonable doubt with an eye towards a jury trial. It's not about a conviction, but I believe if I'm filing a case, to put a defendant through this process is a deprivation of his life and liberty. I'm not here to harass people with cases and need to know I can prove it beyond a reasonable doubt.

When you get a case presented for filing and all of the elements are there and you can prove each so it's one and the same. In general the people who do sex crimes want it. One reason is because you feel you're making a difference. Vertical prosecution is more humane as are specialized units [for law enforcement].

It is really whether there is sufficient evidence of the elements. It is not a gambling thing. We take victims' rights very seriously and their need to have advocates, so quite a bit of our cases are uphill cases and family violence engenders eye rolls from the beginning.

I need corroboration. If I believe what they present is enough then I will file it. If the defendant is in custody sometimes I take that chance. A lot of our defendants are not going to stay put because they may flee.

We have to always be thinking ahead and thinking this a case where twelve jurors from the community will be hearing the evidence. It's a high standard.

We have to, by policy, file based on whether we have an objective to believe guilty beyond a reasonable doubt to a jury. That doesn't mean we worry about winning or not. We are happy to go to trial because it should be filed and should be a trial. But we do have to file according to the law and if there is no chance it could be proven then that wouldn't be a proper file.

We think about the likely outcome in front of a jury. The cases get worse as we go and victims become afraid or they no longer want to prosecute and we see the case disintegrate before our eyes, so we try to get as much time. I look at the legal elements met in front of a jury.

Given the proof beyond a reasonable doubt in a jury trial standard, interviewees were then asked about the factors that would incline them to reject a case:

You could have in a perfect world a technical rape: she says no but he didn't stop and technically that is a rape but the problem is context is everything. Jurors are not going to hear just 'I said stop but he didn't.' They want to know what was going on, how well they know each other, and often those factors do not work for well the victim. The girl I spoke of earlier [for example], she was flirting, she was drinking, and defense lawyers jump with that. And you get jurors who are less sympathetic or not sympathetic at all. A lot of the cases where girls are drinking too much at parties do not get filed. We have girls who have had multiple partners throughout the evening and they do not get filed.

The main factor in rejections is lack of corroboration. A she said/he said is difficult in terms of proof beyond a reasonable doubt.

We always take cues from victims. If victims do not want to go forward it becomes a hollow victory. Women who do best are those who get counseling. There are two roads here: there's therapy, in and outside of the courthouse. But more often than not once they've got to the DA it's fairly rare, unlikely, that they will not want to talk by the time we get them. They have no idea about the system and what say means a lot. They take their cues from what we say.

I look at the context within which it is being reported. If you're reading it feeling like someone has an ulterior motive here, there's something else going on here; sometimes if they are excessively cooperative it is a red flag. If you feel they're forthcoming you take the goods and go for it.

Corroboration of the victim's story. When there is immediate reporting followed by a SART generally there will be some sort of findings in the exam, which are helpful, as is DNA. With minors all we need is the defendant's statement.

If I don't have the elements. I won't file if there is no corroboration because the thought of putting her through the trial could be psychologically devastating if I don't think we can win. If it lacks corroboration I would not file.

Lack of corroboration of the victim's version. If there is nothing to support what she is telling us that is a problem because it is her word against his. I've had times where in the same family there are choices the victim makes that call into question her credibility that we can't educate the jury on. An example: consensual sex after the claim of forced sex within a few hours or days; there have been times when that has happened.

I get he said/she said with no corroboration 40 percent of the time. I either ask for more or we reject.

On rejection of cases, a crime has been committed but the victim does not want to move forward or there is no corroborating evidence and it is a he said/she said and we need something to get the jury to believe that the victim counts. In spousal stuff sometimes there is no injury and no witness and ethically we cannot file unless we believe we can prove to a jury beyond a reasonable doubt. Sometimes something bad has happened and we do have the evidence and the victim doesn't want to testify. Often because she is already in a DV relationship there is [evidence of ongoing] injury. Family Violence [Division in the DA's office] is situated differently than a sex crime unit or a case involving strangers because there is still evidence of DV. I have had victims not want to prosecute in [domestic] sexual assault cases. They might even come in with a broken arm.

Is there a valid defense? Standard operating procedure is I need to know are the facts there: legally sufficient admissible evidence of all elements of the crime, the identity of person who did the crime, we believe he is guilty, and we believe a jury would find them guilty even after considering all of the foreseeable defenses.

Rejects: a family dynamic giving rise to a defense of untruthfulness, or no corroboration, or sometimes in an interview an evaluation of prior inconsistent statements. We represent the state of the California and the last thing you want to do is double victimize the victim if there is reasonable suspicion. The police want to cover their ass so they have supervisors look at it, and we look at it. We always have that scrutiny when we go through these cases.

Delayed reporting, no corroboration such as, for example, a fresh complaint witness. If there is none and no admission from the defendant that will be a likely reject. If there is no SART exam on a violent sexual assault, rape, or sodomy it is likely to be rejected if there was delayed reporting—defined as three months post assault—even if it was not to the police. We need independent witnesses.

I would think inconsistent stories or facts that don't make sense. Is it somewhat of a reasonable real life situation? We look at it and say, 'OK, this person says this happened

but the physical evidence tells me it didn't.' It's just an assessment of the facts presented to you and if there's anything to corroborate it.

Insufficiency of the evidence and no corroboration. Without a witness, DNA, or a statement from the suspect, we can't go forward. We need corroboration of the victim's testimony.

We have to be able to prove our case. This is someone telling us something that happened, and if there is nothing to support it it is unethical to go forward. For example, if there are no findings from the SART exam, no injuries or semen, nothing from the suspect or other corroborating evidence then it would be unethical to go forward without anything to back it up.

When I file I need to know all the elements of an offense are there. I'm looking for corroboration, admissions, witnesses, DNA, and physical injury. I would reject if there is no corroboration or if the victim refuses to cooperate. I would say one in ten victims are not cooperative, but even that sounds high. Most are often scared and not wanting to, but they are willing. I tell them this isn't just for you, but it's for the community. A guy could have no record and be otherwise upstanding but a crime is a crime. We're all human and humans make mistakes. We're prosecuting people not as people but for the act they have done. Look at it as an act. You can't put someone on trial as a person. Unfortunately we deal with monsters.<sup>109</sup>

The sole thing we are looking for is corroboration. You need all of the elements of the offense and you need corroborative evidence so that's the sole thing. This means a pretext, priors [criminal history of the suspect], a statement by the defendant, DNA, or medical evidence. Suspects will talk in about 15 percent of cases. I'd say we file 1 in 20. They're pleading most often because we have good evidence. You're not going to file a case like a cowboy with a child sex case because of the strain on the victim to go through this process is enormous and it would be unethical to do that for my cowboy need to win. Most of the time we have good evidence and we have a big hammer thanks to California sex crimes laws so most of the time people plea.

I reject when a victim is uncooperative.<sup>110</sup> A detective will come to us and say that they have been trying to get a hold of the victim, but the victim is uncooperative and/or didn't want to deal with it. So we reject. I had a case where we rejected it then the same defendant raped later and we contacted the prior victim. Now she is totally cooperative. The victim stated that after time passed and there was no retribution, she was more cooperative. With victims you never know; one day they're cooperative and another they're not. I don't think detectives have the time or resources to call them constantly.

A fileable case meets all of the legal elements of the charge, which include a credible victim and strong evidence. Oftentimes, we have evidence that we can't use like hearsay statements. For instance, the victim told her friends that if anything happens to her it will

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<sup>109</sup> This DDA spontaneously added that s/he had only prosecuted two females.

<sup>110</sup> This DDA estimated that of every ten victims, three are uncooperative.

be because of him; or he has raped me in the past. But because of Crawford we can no longer get this in if the victim is dead. We may have good evidence but if we can't use it then I won't file it because it won't meet our standard.

Corroboration is the primary thing. If there is corroboration and it is credible you really don't have a choice about filing. If you do an interview and the victim comes off as credible, meaning does the story she tells fit the facts and the other evidence in the case. You get a sense of whether the victim is telling the truth—90 percent of our filing decisions come down to whether there is or isn't corroboration.

If we have a case where we have corroboration but we have an adult victim who says that she won't cooperate, we won't file charges. So, we are looking for a cooperative victim.

I would file if the victim got a SART exam and there is DNA and you get a hit and some other evidence and corroboration that it was forceful. I've seen cases where the victim wakes up and is bleeding and there is serious genital trauma and a SART nurse who will say that this is not consistent with consensual sex.

I am looking for evidence of a crime, be it witness statements, forensic evidence, or physical evidence. I'm also looking at the defendant's history. Does he have a propensity to commit these types of crimes? When did the victim report?

I will reject if there is a complete lack of corroboration of the victim's allegations. Sometimes even if the victim comes across as believable, we have to acknowledge that it is something that we will never be able to prove. She said/he said case where there is no corroboration—these are very difficult to prove. You have to think about the victim. She will be cross-examined by the defense attorney who is going to question her about her behavior.

I probably file at least half of what I get, if not more. I probably reject a lot more DV cases than sexual assault cases. My attitude is I want to file them if I can. We have a lot of cases involving very disgruntled teens who are pissed off at their parents and then make allegations of abuse.

We reject a lot of the unlawful sex cases or refer them to the city attorney. These are not register-able offenses.

I would reject if there is no corroboration. We have to have something to corroborate the victim's testimony or we will not file the case. It is as simple as that.

Interviewees were then asked whether there are any types of cases where they would file charges even though the likelihood of conviction was low. Some prosecutors provided examples

based on their experience, and others highlighted that charges should not be rejected just because a case may be difficult to prove:

I had a prostitute case where the suspect had priors. I knew it was worth pursuing. I filed. She did the best she could to get him out of it at prelim. Charges were dismissed. He killed someone six months later and is now in prison for twenty-five to life.

If we think a case is provable but it will be difficult but we think we can do it, we'll file it. That's the bread and butter of our job. The super easy cases aren't going to trial. If it'll be difficult we will file in those. A case I'm in trial in right now, the defendant is the father of all three victims: a female and two males. There is no physical evidence and the defendant didn't admit to the conduct. My whole case is based on the words of the three kids so it is hard to elicit information from him on the witness stand. It's a difficult case. I have friends of the family who saw weird things, weird statements the defendant has made to other people, but it's going to be a difficult case. Multiple victims give it more credence. These are three separate children who are now grown. How are they benefitting from this? Why would the boy say this if it wasn't true? There is no motive to lie. I [also] filed a case that was an acquaintance rape. He was homeless, and she had been kicked out of her house but was at the homeless shelter. They knew each other. He took her to the desert and raped her. We have his DNA and he denied saying he had sex with her then he later said he did. That was a hard case because she said it happened and it was late disclosure. He pled for twenty-eight years. That case didn't go to trial. The victim wasn't very sympathetic. She was a big girl. That's another thing we have to worry about with jurors. They're expecting some meek little thing to walk in. It would have been difficult at trial. So there are cases that we know will be difficult but we'll still file them.

If I thought it was an absolutely righteous case and there was anything to corroborate what the witness said, and I was unsure what a jury would do but I thought I could do it, then I would file.

Yes. I recently did one and there's a motion for a new trial pending. I got a conviction. I believed the victim and I believed there was corroboration. It came down to witness credibility and the kid was sodomized by his father on three to five occasions. He was around ten at the time and he never cried. He was not a kid who cries. The defense investigator painted the kid as a sociopathic liar. The mother was in jail for abusing him. He confesses to his mother that his father was doing this. My corroboration was the kid complained of bleeding in his butt and cried to his mom. The descriptive words he used he realistically couldn't make up. He said things like 'sharp pain and burning.' What was challenging was the father did not give a straight cop out, but I argued under a legal theory of adoptive admission. He would deny it, and then fail to deny.

Yes, I would do that if I felt that there was sufficient evidence even knowing it would take a great deal of education of the jury to get them to understand things more than they do in general society. I had a case where the victim went with the boyfriend and stayed

the night with him and he beat and raped her and she stayed the next night with him. She had serious injuries. Patrol officers walked up and saw the trailer was moving.

I would file if he had a history of sexual assault arrests where nothing happened.

If I believe the victim and have corroboration, even if it is weak, I will file. But my responsibility is to be sure that jurors will convict. I tell victims that I can't file if a he said/she said.

Policy-wise we aren't allowed to file unless we believe we can prove beyond a reasonable doubt. Do I file things I think will be hard to prove? Yes. If personally I believe my victim. If I interview one I find incredibly compelling, and there's a richness to the detail, almost a believability and ring of truth to how they describe things then I will file it explaining to them the odds are really low and are they still willing to go forward. I tell them we will have problems here and we could very well lose, but if I have a go ahead then I will move forward. It's not about a particular charge; it's about the victim. They're on trial. All the legislation is about we don't want to re-victimize the victim but at the end of the day we are putting her on trial for why she wore what she wore and went where she did. She's being judged.

I have to believe I can prove it beyond a reasonable doubt. That's a tough worded question because I have to do that beyond a reasonable doubt but I have a case where I have two sisters who reported a little late and we did a pretext phone call and in it he doesn't ever deny it. I think that is sufficient proof because if that was me, I would deny but this guy said 'I'm sorry, I don't know, I don't know.' I think this case will be tough for a jury but I am still trying it.

Problems with a case do not stop me from filing it. If chance of conviction is not there to the point that it would be unethical to file then I wouldn't. All cases have problems though and the point is to overcome them by being a good attorney.

Yes. I had one recently I know people wouldn't file. I had Hollywood girls, wannabees, and the defendant was a DJ. He would party with girls and give them Xanax and a lot of them couldn't remember what happened. They'd wake up either sore or sticky and they'd ask what happened. He'd say 'We had sex, you loved it.' All had similar experiences where they would leave this house feeling like they were raped. They had a bad feeling and were uncomfortable. They were not sure because they were unconscious and hearing it from others made them feel uncomfortable. There were three girls originally, but I found two more. Individually, each would be rejected but with five, a few of which didn't know each other [it made for a better case]. You wouldn't like them [in the stereotypical sense of what a victim "should" be like]. They continued to hang out with him, they dressed provocatively, and they did a lot of drugs. I felt the generational difference would be a problem with the older generation, seeing how they hung out with him. Older women would not understand that. How you could be in the room with someone who raped you? I filed it, and I'm glad I did because he wound up pleading. He registered as a sex offender and the girls got to do victim impact statements. The defense attorney said



‘These are just party girls.’ The defense attorney was sending me their Facebook pages where they were in pasties. We should have the freedom to take as many drugs as we want.

Every courthouse in the County is different and the juries are different so if we were going to be filing cases based on whether we are going to get a jury verdict of conviction we would never file. So, yes, the answer is yes; we never know what a jury is going to do.

Yes, there are cases where I would file even if likelihood of conviction was low: cases involving really bad people who are doing really bad things. If the victim is on board and is willing to go to trial in spite of the fact that conviction is unlikely. If it is someone I think is going to do it again. Those are the types of cases that you are willing to take a chance with. As long as the victim understands that it is going to be a difficult case.

If you have even a little bit of corroboration and you believe the victim, you can go forward with it. But in this case you have to size up the victim; how is the victim going to be perceived by the jury? If the jury is going to hate the victim, this is a case that you should not file. Why put the victim through this if there is no chance of a conviction. Jurors want evidence; they don’t just want the words out of the victim’s mouth. They should want that. Why should they believe the victim who says, ‘He did it’ if you have absolutely nothing else and if he is saying either that it did not happen or that it happened but it was consensual?

We get a lot of prostitute rapes and, um, probably the highest percentage of rapes of prostitutes are false reports. The John ripped them off and they report it as a rape. They will jump through a few hoops but we usually sniff those out. We have had four or five serial rapists who prey on prostitutes and we get convictions on those. We can sell that and we do get convictions on those. It’s the one that is all by itself that is very difficult.

That’s one of the toughest parts of the job. As much as you know that someone did it, you have to recognize that it will not be proved beyond a reasonable doubt and it can be more traumatic to the victim to drag her through that. That does not mean that just because a case is hard to prove that they will reject it. If they feel person did it and they develop evidence and argue it properly to where a jury will find him guilty then they have a responsibility to file those cases, even if they are difficult.

That’s a hard question to answer because our standard is facts we can present to a jury that would prove guilt beyond a reasonable doubt. These are difficult cases because they involve interpersonal relationships and human beings consider that in making decisions about cases, whether right or wrong. It’s difficult. I use the standard of when you look at a case you want to know you’re going to be able to prove it because you don’t want to put the victim through it if I can’t prove it. I always think how could I prove this.

That’s difficult to answer. If I think a jury may not convict, or if there was a slim chance but you believed the victim yet there were problems with the case; all of the cases have

some issue. There are so few that are slam-dunks. We have to think we can prove this case beyond a reasonable doubt. That's a hard question to answer.

What we need to prove in court, what is admissible, and how are we going to prove it. A jury trial standard for filing; that is how certain we have to be.

If there is enough evidence based on our ethical standard. But it is a case-by-case basis. There are some cases where you do the interview and you know that the victim is credible but there is nothing to substantiate her testimony. Ethically we should not file that. There are some cases when you are filing them knowing that they are going to be hard and you don't know how the case is going to turn out. We never file cases just because we think we are going to win them. We file them based on the evidence and based on our ethical obligation.

The key issue is do I have corroboration of what she is saying. If it is a she said/he said situation a jury is not going to buy it if you don't have any corroboration. I need legally sufficient, admissible evidence. Corroboration can be many things: injuries that are consistent with her story, witnesses, prior acts of the defendant, or additional victims. But we need something if we are going to take the case to a jury and win.

For filing consideration in all crimes it is standard to have some corroboration because one word against another is impossible to prevail beyond a reasonable doubt. As to ones where a victim is a participant and you want to move forward we look for something beyond what just comes out of their mouth. It is not uncommon because these crimes happen behind closed doors and not in front of a camera. That corroboration needs to come from injuries, statements from the accused who admits crimes, and, occasionally, consistent reporting by the victim; that, in and of itself—the extreme consistency—will give rise to a filing.

### **Most and Least Prosecuted Cases**

Prosecutors were then asked to describe the cases that are most and least prosecuted in their office. Interviewees noted that while occurring the *least* frequently, stranger cases are the easiest to prosecute because the consent defense is an uphill battle for the suspect:

Multiple victim cases; DNA cases. The exception is when the victim is a prostitute because the issue is not whether the act happened but whether it is consensual. Even in serial rapist cases with prostitutes there can be success.

Ones where victims have physically struggled and have visible injuries. If minor injuries accompanied by black eye, etc., those are the ones jurors want to see. Even in spousals we do not have dramatic physical injuries. It is really sad because things we often see is women say I should have done something more.

What I'm learning now is if someone is in custody and we have access to the calls they make in jail; especially if it's a case in a setting where they know the victim. If you can get one call where they beg the victim not to come to court, etc., that makes them a slam-dunk. DV and sex are the hardest juries to pick because so many have experienced or witnessed it. Then you're left with people who say if I don't see it it didn't happen. Somehow if they hear it from the defendant's mouth then it's closer to a slam-dunk, but then they're more likely to plea [defendants who provide some sort of admission].

Whenever there are physical findings in the SART exam like injuries, tearing, or lacerations, that's a good thing for us. There are cases where there is DNA and the suspect generally denies any sexual contact with the person or denies being anywhere near the person that day. If strangers it's even better then we have the element they didn't know each other and less of a chance there was consent.

DNA cases and stranger cases. When jurors hear rape they think stranger. They don't think of grandpa or uncle or brother. A stranger case with a DNA hit, or any case with DNA hit [is the easiest to prosecute]. DNA can assist with kids, but not in adult cases [because the suspect will argue consent].

Solid, dead bang cases do not exist because you're dealing with twelve jurors. Usually the ones where we have a confession helps. That's almost a dead bang case but not one hundred percent with a jury.

Again, the ones most reported and easiest to prosecute are stranger rapes because there is no emotional connection. Anything where there is corroboration from independent witnesses.

When we have DNA. I don't think anything is a dead bang. The stronger the case is the more worried I am when I try it. But, what helps are injuries and a good 911 call; usually stranger cases or a defendant with prior victims.

DNA makes it easier to prove. Plus, if the suspect is a stranger there is no reason for a woman to get up and say these things happened to me in terms of a stranger. Jurors want DNA. They want what they see on CSI. They have unreasonable expectations about what can be found and how fast. I have a case now involving a woman who had prior consensual sex with the suspect, but then he came over and raped her. He denied having sex with her that day so we thought it would be a slam-dunk if his DNA was there. We've already had to dismiss and re-file the case; and she has some personal issues, which will make it hard without DNA. The pretext phone call dominates if officers can get it.

Child physical abuse and DV where there is serious physical damage; not just a bruise, more like broken ribs, bloody noses, etc. Even when victims report and then the police are brought to calm tensions they usually recant. But there's medical documentation to show what she's suffered and jurors have something else to hang their hats other than the

victim's word. I'm talking about broken bones and fractures. Jurors look at parents. There's nothing to account for those injuries. Society wants to lash out at these people." "I hear stranger rapes are easier, but I don't know. What makes our world difficult is these are people who generally have some sort of relationship [in the majority of cases]. I think because so much of our molestation cases are family, or acquaintances, and rapes by intoxication are usually committed by people they know; I would think, I don't know if it's the consensus, but sex cases are difficult.

Stranger assaults from perspective of a police officer are the hardest to investigate, but from the prosecution standpoint those are the easiest because any and all corroboration is helpful. There is no reason for any touching to have occurred. Any DNA, movement of a young teen's body to a different location, or if anything happening in a place other than the street it would be suspect because there is no explanation for them to be together. It plays into our fears. It's what gets coverage in the media.

Continuous sexual abuse, 288.5, and multiple incidents because there tends to be better evidence backing up what occurred because the girl told people when she was little. Also, when she was older, people had seen suspicious things so you wind up with better corroboration in those cases. The one slam-dunk is when you've been able to file a stranger. Even if nonstranger but it is a fileable forced rape. For example an uncle raped his fifteen-year old niece at knifepoint, She had a defensive wound to the thumb and had the knife in her vagina. There were full medical results with his DNA inside her. It comes down to is there a motivation to lie, meaning custody battle; that's a case you're never winning.

The ones that are most reported and the easiest to prosecute are stranger rapes because there is no emotional connection. I've done three stranger rapes but most cases are between family members and someone you know. Community intervention is needed.

A woman who is attacked and kidnapped off the street by a stranger. Those are the easiest to prosecute.

Turning to the cases that are least likely to be prosecuted, interviewees overwhelmingly reiterated that "he said/she said" (nonstranger) cases are both the most frequent type of case they see<sup>111</sup> and the type of case that is least likely to be prosecuted:

Acquaintance rapes because there is always the possibility of a consent defense or cases involving very young children who can't articulate what happened. It is easier to prosecute a stranger rape where someone is picked up off the street. People are more

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<sup>111</sup> Depending on the branch where the DDA worked some reported seeing child cases more often than adult cases. There was a general consensus, however, that although corroboration is also an issue in child cases, jurors are inherently trusting of children whereas they are inherently distrusting of teen and adult females.

likely to believe that happens. There are usually injuries and more physical evidence that can corroborate the victim's allegations.

The hardest obstacle is a lack of corroboration. We sometimes have people come in that we completely believe but if there is no corroboration we can't file because we can't win if it goes to trial. The hardest part of this job for me is having to reject a case because I knew that we can't win it even if I believe that the victim is telling the truth.

Almost impossible is date rape with alcohol because you already have a consensual environment where you consent to going on a date. Most victims will say I consented to a kiss, the beach, and petting, and then said no. At that point in the fact pattern there are no witnesses, there is alcohol involved, and it is incredibly difficult to prosecute unless there is corroboration. The other toss-up are teenagers and young adult victims of molestation in their home because of the built-in biases society has against teenagers. People think teens lie, especially when teens are being molested in the home because they often have school problems, substance abuse, or other problems. Again, there's often no corroboration in these cases. For every fifteen we get you might be able to prosecute two.

Date rape or cases where people actually know each other because often there is a prior relationship which makes it more difficult to get jurors to convict when they may feel that they have slept together before so they do not take it as seriously. Also, because they know each other, the suspect will know the right thing to say. He has a lot of info to use to tell a good story.

Cases involving drug facilitated sexual assault or alcohol are the least likely to be prosecuted because of the victim being unconscious.

When our victims have some type of mental illness or substance abuse problem. One of the problems is when officers respond we are stuck with what they put in a report. If they put impressions in the report that are not well written then we have to deal with that. Sometimes victims need more prodding and are extra cautious of new people and situations. On a prelim day you need to wait all day so substance abuse causes problems.

I have only one adult case. The defense always makes it consent but anytime there has been prior contact between the victim and the defendant, whether friendly or just banter, it becomes a way to say she regrets [having consensual sex]. It might plead for something less and you can go just on her word. Corroboration can be as simple as saying she said it happened on the back of a tow truck, and we found a pillow on the back of the tow truck. It doesn't have to be that someone saw it. It doesn't have to be that he copped out. Sometimes it's a weird story he says that keeps changing and that is corroboration. As long as you believe they are guilty you should go forward. If you are concerned about the jury you think about how you can get the most of them. I had one who was a four-year old boy when it happened. It was sexual abuse by his dad. I did file because I believed it. The little boy was all over the place at prelim. In that scenario I wonder if he will plea to

288 and do registering. I don't want him having access to this kid. You think of the worst case scenario if I completely lose this case.

Acquaintance rape is the least likely to be prosecuted because generally it's going to be a she said/he said and there will be no witnesses. And those who did see them will have only seen the two together prior to the rape. You only have these two people who met at a party or are friends, who have gone together consensually and then something happens and rarely there is physical evidence and he says yes my DNA will be there but it was consensual. We never file those unless there is other proof other than victim's word that something happened.

I just had one where a woman's husband was in prison. The suspect was her husband's friend. The woman and the suspect had been hanging out and he showed up at her house in the middle of the night and asks to come in. She says no, and later he comes in through the window and rapes her and leaves. Her daughter woke up during the assault and saw it plus she was on the phone with a friend who heard what was going on. Without corroboration it doesn't get filed.

Date rapes, drug facilitated sexual assault, spousal rapes, and acquaintance rapes. Jurors don't believe you can be guilty of raping your wife; child cases with great delay in reporting and little to no corroboration.

I can't say there is a type of case. A lot of people say DV cases because you have very uncooperative victims, but I have been successful in all of them. They say it's like prosecuting a gang case in terms of cooperative victims. DV is difficult 90 percent of the time. Adult sexual assault or rape is hard because of the credibility issue. Where you have jury sympathy for kids it's the opposite with adult cases; jurors start out suspicious.

Between spouses, especially where there is a divorce. I have had success with long-term relationship type of marriages but divorce and custody battles create problems when the suspect and victim are already at odds with each other. The same holds true with a dating relationship where there is a breakup and the defense can color the testimony of victim as bitterness.

There is a huge societal issue with spousal rape. Many think if you're in an intimate relationship they do not think it is a crime if sex has been had before. Anybody can understand a stranger but they look at it as sex with regret in nonstranger cases. Many times there will not be violent injuries in the same way as there would be because of the dynamics.

Child molestation with late disclosure. The obstacles are that often victims don't want to tell you everything. They give it to you piecemeal and then you go to a jury and they don't understand why they add things. And also juries want CSI.

Uncorroborated in which it is one word against another; also when it is a child molestation amidst a divorce proceeding or child custody.

Absent prior conviction it is difficult when a prior relationship occurs or if a girl puts herself in a situation. Maybe other jurors would be judgmental and say she put herself in a bad place. One of the trials I did was a young woman in her early twenties. A guy rolls up when she is walking home from the liquor store. They went to a park, smoked pot, and he raped her. He had a prior arrest and conviction. I brought a past victim in and we got a conviction.

Delayed reporting because of the way the jurors see it and we always have to consider this. They do not get it. For them it is hard to accept the fact that you do not tell. If a child is abused and doesn't tell it is challenged. Often the time of disclosure is divorce and there is bias at that point because they want to hurt the father if there is a custody issue or that is finally when they will disclose and it is harder to prove a touching than with a rape. Often with rape there is injury involved and testing, etc. Adult victim cases still involve the touching, like oral copulation. It is harder to prove because they do not report. Especially for children they minimize the conduct of the defendant. Adults can articulate better.

Date rapes. The obstacle is the prevalence of alcohol. Young women, whether normally sedate or not who are not promiscuous, go out with friends and drink shots and lots of beer, and they pass out and don't remember they may have been swapping spit with some guy and suddenly she wakes up with Lance Romance whom she doesn't really know. She goes home and tells her mother who says she was raped and they go to the doctor. They ask about pain; there may be trauma, or not. And the case gets to the police. You have a person with no independent recollection and what's the boy's defense? Consent. We get cases from [a local college] and we get little mileage from these cases. Date rape was rampant when I was in college. I was a coward. If a 6'9 guy lies on a 5'3" woman, women are tremendously judgmental. If she didn't want to have sex with him why did she go to his room? Think *Gone With the Wind*. He apologizes after raping her. We live in a male dominated society. Why is a woman a slut or whore and the man a stallion? Think John Wayne in *The Quiet Man*: he steals a kiss from Maureen O' Hara. Or Clint Eastwood: he drags a woman into a barn and rapes her. Her reaction is initially anger and then she says it's OK. Jurors are also indoctrinated from Jodie Foster in *The Accused*. They're expecting a woman per *The Accused* or *The Burning Bed* but the law says you only have to say no. Jurors, and women, as a group have been sublimated and they're expecting the Blessed Virgin to get up there and talk about how Joseph did this to her and this is simply not going to happen. Example: a DDA did a case where a woman was drinking with a guy. She walks to the bathroom and he rapes her from behind. They [jurors] thought the girl got drunk and got what she paid for. Until you change this about the woman as the vixen or whore [nothing will change]. Sex crimes are unlike DV, which is all over the place. In a sex case it has to be in a straight line. Now you have the bar equation and that it is a non-winner unless you have a guy who denies.

Child molestations of kids age twelve and older. It is usually prior abuse and delayed reporting. It was a repeated pattern at home and they didn't know how to get out of it and it was the first time they felt comfortable to report. The problem is there is no physical

evidence linking the person because many of the defendants don't have a record, have never been in trouble with the law, and have people vouching for them. Usually we want corroboration in terms of evidence. It's hard to get a jury to care if it's happened previously.

When it comes to rape people say to be wary of strange men. But it's not the stranger who comes inside the house. It's known suspects and victims who met at a club or bar, or friends, or maybe they dated. Usually they are drunk or inebriated or unconscious. The jury may say you may have said no but your actions said yes. The law is clear that even one word of no means no, but jurors want signs of actual force because they want signs but it's the victim saying no that makes it rape.

The hard thing about VIP is a lot of our crimes are interrelationships. What I mean is family, stepparents, and people that you know. So just by its nature VIP cases are the most difficult because these people are victimized by people who they know and love and trust so those are difficult for everybody. As far as adult sex cases go, at least what I've seen, rape by intoxication is very difficult. Usually it's someone you know, a girl in her young twenties, and society as a whole used to blame the female and say you got drunk and you deserve it. I think there is change, a little bit. I did a trial where people were like 'Oh god, it's a hard case. The girl knew and partied with the defendant and his family before, and on this occasion she got too drunk and he raped her.' Her behavior for some people at the party might have been seen as provocative. Society for a long time has blamed women who place themselves in the situation. I don't agree with it, and I think it is changing. I think that as society realizes these rapes really do occur then you see a change in the jury. Those cases are difficult to file and prove. It is very difficult to get twelve jurors to convict. I think the case got filed because we met with the victim. She had already gone through the prelim and we met with the victim's family. In sex cases we generally pre-interview the victim. I can't tell you why that one was filed, I can only tell you what I would think. You sit with these people and you truly believe they're credible, that what happened was true and they deserve justice, their story needs to be told, and the defendant needs to be punished. I think we believed the victim and she deserved justice. I didn't get the case until trial because the person who was assigned to it was transferred to a different Branch. We do our best to keep them from the onset.

Getting victims to come forward and feel comfortable to testify. In terms of prosecuting the case, there are so many variations. Every case has its own issues and it varies from case to case. Cases with DNA are more complex, as are statute of limitations cases.

Alcohol and drug-related cases are difficult because of the consent issue. Rarely do we have enough evidence to prosecute those. It's not a barrier in a family case. They're [victims] willing to tell it's more that we can't get a confession. Acquaintance rape is also hard when it's someone they already have a relationship with and the issue is was it consensual. Absent medical evidence of force or trauma it won't get filed.

A victim who is a single victim in the dating age who knows the assailant; and date rapes. They are the hardest to prove so we reject those the most. The barriers are the



victim knows the assailant and the victim consented to some part of the relationship: to go on the date, to kissing, to drinking, or to taking drugs. According to the victim the defendant took it too far and didn't take no for answer, and for the jury it's a he said/she said and if the victim has already agreed to x and y they have a hard time accepting she didn't agree to z.

Cases that don't have DNA are the hardest. Jurors expect it because they watch all of this stuff on TV. I don't know how we ever convicted anyone before DNA but we did.

Good cases: there is no such thing. If you have DNA, then it goes to the issue of consent and then we are arguing the consensual nature of the acts. I personally have not lost a case in about twelve years but there is no such thing as a slam-dunk in the cases we take to trial.

Rape by intoxication. I find that in those cases even if you try to educate the jury and explain to them that a victim who is in intoxicated does not deserve to be violated. But there is an old school attitude that victims somehow deserve what they get. Acquaintance rape cases can be difficult. If people know each other jurors tend to err on the side of the defendant.

Acquaintance rapes. The main issue in a sexual assault with an acquaintance is consent. When two people know each other and have had a prior sexual relationship, one will be most likely saying it was forced and the other that it was consensual and there is no evidence to prove that it was not consensual. We don't file many of these. To do so, we would need something else, something other than the victim's allegations. Many times there is some type of ruse used by the law enforcement agency that leads to an admission by the suspect. Pretext phone calls, for example, are very helpful if the suspect admits what he did or apologizes to the victim. The biggest factor in filing a case like that would be some type of admission by the suspect. Evidence that he used some type of date rape drug would be helpful, but that is difficult to find. Evidence that the victim was extremely intoxicated; in that situation you are not looking at a forcible rape but at a rape by intoxication because a victim in that situation cannot legally consent.

None of them are easy. I think that cases that involve strangers are easier because in those cases there is no issue of consent and DNA evidence that puts the suspect at the scene of the crime can be helpful. Also, with strangers there typically is some evidence of force. You have to remember that jurors have certain expectations. They don't like cases involving acquaintances and are likely to question the victim's testimony. We don't run into that [juror suspicion] as often in stranger rapes. When people think about rape they think about the stranger lurking in the shadows with a gun or a knife. They don't think about people going out to dinner and something happening. As to the proportion of cases involving strangers; most of the cases that are presented by law enforcement are acquaintance cases. Very, very rarely do we see a stranger rape; at most, 10 to maybe 20 percent would be stranger rapes.

Acquaintance rapes because there is always the possibility of a consent defense or cases involving very young children who can't articulate what happened. It is easier to prosecute a stranger rape where someone is picked up off the street. People are more likely to believe that happens. There are usually injuries and more physical evidence that can corroborate the victim's allegations.

In adult sexual assault it would be cases without any corroboration. A victim comes in and says that she was at a party hanging out with a bunch of guys, and when she woke up her panties were down around her ankles. She was drinking a lot, and he is saying it was consensual. What can you do with this type of case?

A slam-dunk case has physical injury, the victim can identify the suspect, and there is DNA. If you have all three, you are great.

This section has examined the filing standards and procedures described by interviewees. Prosecutors emphasized a proof beyond a reasonable doubt in a jury trial standard, and stated that while vertical prosecution is the goal in the VIP program it does not always occur in practice. Consistent with the LAPD and LASD participants, DDAs reported that stranger rape is the least common but most likely to be prosecuted, and that nonstranger cases are the most common yet least likely to be prosecuted. Prosecutors related the majority of their decision-making to the likelihood of a conviction and jurors' preconceived notions of what constitutes rape.

The following sections focus on evidentiary and trial related factors such as the role of DNA in nonstranger sexual assault, the factors that can lead to charge dismissal, and the manner in which plea bargaining most often occurs in sex crimes. The final section discusses how to increase the successful prosecution of sexual assault, and the role that law enforcement and the DA's office can play in decreasing the difficulties for victims associated with prosecuting this crime.

## **EVIDENTIARY AND TRIAL RELATED FACTORS**

### ***The Role of DNA***

We asked prosecutors to describe the role that DNA plays in prosecuting sexual assault cases. Their statements emphasize the importance of DNA, albeit most consistently in relation to juror expectations and in cases involving strangers:

Juries have incredibly ridiculous standards about what DNA should do. If DNA is somewhere it should be it isn't useful. If it's somewhere it shouldn't be that's an issue. It's rare to have a stranger rape. I've seen only one murder-rape. I have one where they were brief acquaintances. DNA is important in this case because he denies having sex even though he knows her and was arrested in her presence.

It is getting more and more common unless there is a long delay in reporting. The girls get a SART exam and they look for DNA and injuries and whatever forensic evidence they can find. A lot of those kits get tested. It didn't used to be the case, but they are getting tested now.

Jurors like DNA because it sounds exciting. They like us to have PowerPoint and pictures. Prosecutors are held to a different standard so it is better to take advantage of technical things. Even if you don't have any evidence, show it; have diagrams, etc.

Jurors today expect DNA and you have to educate them on all the reasons why it wouldn't be there. If you hear the word rape or molestation they want to see it. That is what they expect and more.

In cases involving acquaintances and intimates DNA is still useful because if it is someone with whom you haven't been having sex I am going to request DNA anyway even if the suspect is arrested and says it was consensual. I like to put it on the suspect because she is saying we didn't have consensual sex and then he has to explain why she is saying rape.

In my caseload of twenty cases only two involve DNA and they are both violent sexual assaults including rape and sodomy. Jurors need something to hang their hat on, and if there is no admission [by the suspect] then they want DNA. They want it because they see it on the media. As a prosecutor it is not relevant but jurors care.

DNA is hugely important because it strengthens the case even though it complicates it. It is very powerful; the best thing we can have, especially with strangers. Serial cases are linked via DNA when victims couldn't identify the suspect.

I had an interesting case where the whole thing was basically DNA. It was a stranger rape involving multiple assailants. The victim was at a club and was dancing with a male friend. She went to the bar to order a drink and someone she did not know offered to buy

her a drink. She accepted a drink from him and the next thing she knows she is in a car with three guys she does not know in Old Town Pasadena. She manages to call her friend to pick her up. When he gets there he sees several other people around and notices that the victim's clothing has been rearranged. They leave and call the police. When they do the SART exam, DNA from three of the males at the scene is found in her body. That case is still pending, but that case never would have been filed without the DNA because she could only identify one of them and was in and out of consciousness the entire time and could not recall exactly what happened.

For spousal rapes, DNA doesn't really play any role. But jurors are looking for DNA. Everyone thinks that law enforcement goes out there with these high tech crime scene investigators and that they can get DNA from almost any surface, or fingerprints from a gun. We are facing a lot of problems as a result of that. The way I handle it is to discuss with the jury that this is not TV and what you think you may know does not reflect reality.

It's hard for me to say because I don't get a lot of the DNA cases. In your normal case if the victim has not been examined within seventy-two hours you aren't going to get DNA. Most of our custody cases aren't DNA cases. Most of the child or date rapes aren't DNA cases. A lot of the stranger cases have DNA.

It is crucial: 60 to 75 percent of cases have some kind of DNA. It's not always in the vaginal pool but it can be from the mouth or neck. Some of this evidence can be explained in different ways but if it is consistent with the victim's story it works to strengthen the case.

For jurors it makes them feel more secure in their decision if they do convict. If you don't have it, you have to explain why you don't, which is because of delayed reporting. But it can work both ways because the defense might have their own DNA expert. You have to educate the jury.

I think that it is important and the jury certainly believes that it is very, very important. In a lot of stranger cases we don't have a good identification from the victim and we know what the problems are with eyewitness identification. A lack of DNA, it depends on the situation. If it is a stranger rape and there is no DNA we can explain it, but it is hard. *CSI* shows have hurt us tremendously because they have influenced jurors' perceptions about these cases and about the length of time that it takes to get DNA results. Also, there is an assumption that once the suspect knows that there is DNA, he will confess. That does happen sometime, but not all of the time.

It is factually accurate in assisting us, but it depends where it is and when you get it. If we have saliva on someone's cheek it doesn't matter because that's what normal people do.

The case may or may not be a DNA case. DNA may just be one piece of the puzzle because there is a lot of evidence. In that type of case DNA is not going to be as critical.

But there are other cases where all you have is the DNA. These are hard cases; a bit of an uphill battle but you usually can be victorious.

Jurors are looking for DNA in everything. They are getting a lot of cold hit cases in which DNA is the most central thing. Given the time elapsed victims might not be able to identify the suspect. In non-cold hit cases, things such as biological fluid, ejaculate, and rape kits are important because jurors expect DNA. The consent defense does not necessarily remove DNA's relevance. Some suspects will deny anything has happened because they do not realize that their fluid was left. A significant number will say they did not have sex out of stupidity. Out of every ten adult cases I see, those involving strangers are maybe two total. Stranger rapes are very uncommon. The vast majority of rape cases involve acquaintances.

With stranger rapes they aren't saying it's consensual. With acquaintance rapes there is always something that makes the suspect think it's consensual. In his mind he is thinking it will go the way he wants. With stranger rapes there is no way to think it is consensual. I've never seen a stranger case rejected.

At trial with acquaintance rape you won't have DNA, especially with delayed disclosure. You have to tell jurors this isn't *CSI*. As far as acquaintance rapes it's helpful if the suspect denies sexual contact but not if he's saying we did it consensually.

No, it's not important. Jurors are not always looking for it. It takes a long time and we don't often get it. Like rape, if a woman takes a shower then it's gone. With child cases it's delayed reporting.

If you have DNA it is a great case, especially if it's his [the suspect's]. If consent is going to be a defense it is going to be a defense whether you have DNA or not. The biggest problem is it takes so long to get the results in LA County, but it can be nothing but beneficial. I've had delayed reporting and the lab people are great at coming to explain why there is no DNA.

DNA has come up for me only twice because usually I have known offenders; however, it is argued by the defense anyway to cloud the jury's thinking.

I do not think it is critical except in a small amount of instances when the suspect denies having sex with her, but most of the time the suspect admits to having sex. The suspect will say I had sex with her in the morning but she then was with someone else. Jurors always want to see DNA. When I was at [another Branch] all of my cases seemed to have DNA. It's coming into play more and more as they have mastered the science of DNA so we get it in so many more cases. With late disclosure we don't get it and when we don't have it juries don't like that.

I would like it to come into play a lot more but with late reporting it's impossible. The police try to take the victim immediately to a SART nurse. Sometimes we get lucky and

get a hit, but with my understanding of DNA, if the victim were to defecate, urinate, or wipe herself, the chances of DNA being present are minimized.

In a lot of cases we don't have DNA. Clearly it's helpful in a stranger rape. In interpersonal relationships it could be helpful, but not necessarily. You may know a sex act happened but if they're adults it's a consent issue whereas with children it's extremely helpful. It depends on the case.

Jurors' expectations are completely unrealistic. It's the *CSI* effect. They want forensic evidence and they use their own imagination to come up with what we should have had in a case even though it would be impossible. DNA can win a case but the misnomer is DNA doesn't eliminate the consent issue. For example, a girl went on date with guy she met at work. They went to house and they had sex. She then went in the bathroom and texted her sister. She went back in and they had more sex, she went back to the bathroom two doors away and texted her sister, and then went back to him and had more sex. He stood with her and called a cab and when she went home she said she was raped. She said she was intimidated and consented out of fear. We ended up with a DNA sample and it came back with hit identifying the defendant. They were pushing me to file because of the DNA hit. But DNA in cases where we are dealing with child victims is imperative and will guarantee a conviction because adult sperm should not be on a twelve year old girl's vagina. Getting it processed took seven months.

DNA is always helpful because even if they're not strangers the first line of defense is it didn't happen. It can change the first line of defense to it was consensual, not that it didn't happen. It was consensual is a more difficult defense when strangers. When they know each other it is easier but you can still look at other things to show it wasn't consensual. We can show they broke up and she wasn't interested in him any longer.

DNA goes toward the identity of the defendant and for most of our cases there is not an identity issue.

DNA is helpful if it is going to be an issue of identity. We do get them and DNA is helpful if the perpetrator is denying any contact.

It is amazing how often we don't get DNA evidence in sexual assault cases. That is the shocking thing. In about 30 percent of cases we have some DNA.

If you don't have it you do have to explain to the jurors why it isn't there. You have to put on [the witness stand] a DNA expert to explain why you don't find DNA. There are many reasons and you just have to explain it to the jury.

In summary, prosecutors expressed wide variation in their perceptions of the salience of DNA in prosecuting sexual assault. All agreed that the consequences of shows such as *CSI* are juror pools that demonstrate unrealistic expectations of when, where, and why DNA may be

present in a case, along with the time it takes to receive results from the crime lab. There was also consensus that cases involving DNA and suspects and victims who are strangers are the closest one can come to a slam-dunk, but prosecutors varied in the extent to which they described DNA as relevant in nonstranger cases.

### ***Dismissal of Charges***

Prosecutors were then asked about the factors that would incline them to dismiss charges after a defendant has been bound over for trial. The most frequently mentioned issues related to victims: either DNA or some other form of evidence emerges which impeaches their credibility, or the victim ceases to cooperate. However, other prosecutors stated that if the victim testified at the preliminary hearing then it is not a reason to dismiss charges:

Dismissal at prelim is usually when there is no witness or evidence we thought we had didn't work out. Sometimes DNA comes back and it will suggest something else. Unfortunately we do the prelim before we see the DNA. We do not require the victim to testify at prelim every time. I had a case with an eighteen-year old victim and the defense lawyer was vicious and I didn't want her to have to cracks at her. So, I 115'd her testimony so the officer could testify what her statements were and we had a three day fight as to whether they could force her on the stand. Thank goodness we were successful but it was quite the brawl. There strategically I did not want to have this eighteen year old girl get beaten up. I am not going to watch [the defense do] it twice.

The main thing is if the victim does not want to go forward, or if something the victim states turns out not to be true or there are too many inconsistencies. If we find something in the victim's background that is problematic or if the suspect finds witnesses that support his position. For example, a victim had said an assistant principal was molesting him and that it only happened on certain days. We asked if he had ever given him money. It turns out the defense had a canceled check for a few thousand dollars. It does not mean he did not molest the kids, but the victim got caught in a lie. Juror instructions state that if they find that a witness lied they can choose to discredit them categorically.

The primary and most common is if the victim absolutely refuses to testify. Things come up like they write a letter to the defendant saying things that cast everything that happened in another light and you realize the defense will cream her if she gets up there. There are victim protection related issues. Victims are nervous and scared about testifying.

The victim not showing up; I have not had that happen because that's usually in DV, and not on a felony, a misdemeanor possibly. If you really stay on top of them and make sure they're personally served, they show up for court. You can't threaten them. I think women are better with these cases. I've shared these offices with men who don't say that.

A situation in which we find out too many holes in the story and the victim was not honest in the initial report. If you don't even know if your victim is telling the truth you can't go forward. If the victim doesn't want to cooperate with prosecution we don't pursue it.

I've never had judges dismiss a case. The only time I have is when DNA results came back and tended to bear on the credibility of the victim. For example, when asking the victim the last time she was with someone and she says no one, but then an unknown male's DNA comes back in a case where the defendant says we had consensual sex.

I've dismissed before because the victim is not cooperative or has skipped town and we can't find her. But I have never dismissed a sex case.

Absence of a witness or exculpatory evidence of some kind. I had one where the woman kept lying to me. It was filed as a rape and a statutory rape and the defendant was an LASD deputy. The defense brought a tape of her saying she lost her panties and he owes her underwear. Victim conduct is critical.

If something came up where we didn't think he was guilty. I had one where we filed and then she claimed cable man raped her. After prelim we discovered four prior police reports where she said the gardener, etc., had raped her. If we have a victim who becomes really uncooperative we try not to force them.

I haven't had to do it where they testify in prelim but not at trial.

If at some point she starts changing her story. At some point we can go from her prelim transcript, for example, if the victim disappears. If awaiting DNA evidence and it doesn't match suspect we would dismiss the case.

If the victim says something different happened. If the victim is making the story bigger than it initially was it appears as though she is out to get him. Any change in circumstance in terms of corroboration; for example, lost witnesses. Next week I am dismissing a case where I found out the victim and mom filed a false police report on her father who was never charged and they admitted it was false. As we get closer to trial I pressed the victim even further and said if there is anything you want to change I need to know because I am not going to put you on the stand and make you look like a fool. She then said we made a false police report but I am not lying this time. That can change the case. But it happens not so often because I press at the front end.



I haven't had that either. I suppose, I would be guessing, but anything is possible. If they're bound over we've already done the prelim, which means we have testimony already preserved. If the victim disappears, depending on the prelim, we'd have to assess the case and it would depend on the crime. Clearly we don't want to put a sexually violent person on the street.

Unless there was some technicality, the only scenario I could see is if the victim didn't want to go forward, but if they've already testified at prelim we can use their testimony. It happens rarely because once they've testified they get more comfortable—unless they're threatened.

Uncooperative victims. In sex cases alone under the penal code a rape victim cannot be forced to be subpoenaed. You can't issue a bench warrant. In any other crime I'd drag your butt in against your will because it's a crime against the state of CA. Sex crimes are too intimate and personal and the potential for damage from testifying is too great. It does not happen very often. I'd say one in thirty to forty cases this happens [the victim is uncooperative].

A victim who refuses to cooperate. But not even that though if I already have it bound over. And even then I wouldn't dismiss it. I've never dismissed a case. The only other thing is an uncooperative victim who I believed wasn't telling me the truth because if I had the prelim transcript I'd probably still go forward.

A victim who is completely and totally not wanting to come in to testify, if we find exculpatory evidence, or if a judge decides that the witness is not credible. Our policy in this unit is that if we are going to do a spousal rape, we put the victim on the stand. You can ask the head deputy for an exception. The purpose is to preserve the testimony in the event that the victim recants. The evidence code allows you to bring in the transcript as long as the defense attorney had an opportunity to cross-examine her. If she does testify at the trial you can put the prelim statements on as a prior inconsistent statement.

If the prelim statement has been preserved properly and interviews have been conducted properly it doesn't have to be dismissed.

Victim recanting or refusing to testify. The only case I dismissed was one where I was kind of sketchy about filing. There was corroborating evidence from the SART exam that was only corroboration if the victim had never had sex before. At the time of the pre-filing interview the victim said she had never had sex with anyone. She recanted after the preliminary hearing and I was going to take the case forward by reading her testimony from the prelim into evidence but then I found out that the defense was going to introduce evidence that the victim did have a prior sexual relationship.

If your victim isn't around and you couldn't put her on for the preliminary, you don't have a case.

Our policy is to have the victim testify at the prelim. Then if she disappears, we can read her testimony in at trial. But this can be problematic if the victim shows up later. The problem is that once you start that trial jeopardy is attached so we would have to dismiss the case and it could not be filed again.

If we are going to straight out dismiss it, it would be because we can't find the victim. If evidence that exculpates the defendant is found—for example, she says it was one guy but the DNA comes back and indicates that it was someone else.

If the victim is no longer cooperative. Victims have a right not to testify, which is a problem. I've never had to dismiss a case outright but I am on the verge of doing so. I have a case involving children whose parents don't want them to testify against the perpetrator, who is an uncle.

If we can't locate the victim. That happens sometimes, especially if it is a familial relationship. If there is no independent evidence we can't go forward without the victim. Exculpatory evidence could also lead to dismissal. Once the victim gets into court and tells the judge that she does not want to testify, there is really nothing that the judge can do. We would have to reassess our case to see if we can go forward without her.

If we found out that the victim was lying, if there was exculpatory evidence, or if the victim suddenly was completely uncooperative and we did not have testimony from the preliminary hearing that we could read into evidence at trial.

After the preliminary hearing you are still gathering evidence and doing the investigation. As time progresses, you may realize that the evidence you have it is not as strong as you thought it was. We sometimes use the phrase 'The case fell apart' because something comes out about the victim that pokes holes in her story and that the defense is going to use against us at trial.

If the victim disappears or refuses to cooperate we don't necessarily have to dismiss the case. If we have done the prelim we have her testimony and can go to trial without her testimony. But we don't like to do that. If we do, we need strong corroborative evidence outside of the victim's statement. If you don't have the victim and the corroborative evidence is not strong, you may have no choice but to dismiss the case. It does not mean that you can't re-file it later if additional evidence surfaces.

### ***Plea Bargaining***

All offers have to be approved by a supervisor and it depends on the type of case. Unlawful sex with a minor generally gets probation. But if it is a rapist, it would be a different situation; we would be looking for prison. Generally, in any child sex abuse or stranger rape case we want to get as much time as possible because they are likely to commit these crimes again.

Prosecutors were then asked the most common types of plea bargains in their office; specifically, whether they reduce the seriousness of the primary charge, reduce the number of charges, suggest a particular sentence, or agree to stand mute at sentencing. Respondents emphasized the importance of getting defendants to register as sex offenders, and for criminal records to reflect the reality of the defendant's conduct:

Prison or no prison or probation; once you make that fundamental decision it is about how much time you can get. We can get an enormous amount of time. Punishment has increased because the legislature has got tougher over the years. Look at Roman Polanski. He is not looking at a lot of time, but these days it is life. Most plea agreements focus on the sentence, not on dropping counts or reducing severity of charge. These things are negotiated based on the defense lawyer's request and they base that on their client. We have a lot of negotiation as to whether they have to register or not and many want to avoid it.

With California's One Strike law in child molest cases two victims becomes a possible life sentence. In many cases when facing many years they will take a forty to fifty year sentence.

Usually when making an offer if they're facing three counts I'll say plea to one or two. If they don't have a history they're more likely to get formal probation and sex registration. How strong of a witness you have enters into what kind of offer you make. Even though you have to file thinking you can prove beyond a reasonable doubt, as time goes on things change in the case: the victim can go backwards a little bit, it gets old, they get less cooperative, or they thought it was over after the preliminary hearing even though you told them that was the first part. Sometimes it's how the victim comes off; sometimes they're not articulate and you can see the jury isn't going to connect with them. You don't give away a case because of that; you think it's better to get something on the defendant rather than nothing. Plea bargains make sense. They're logical. You say the max is twelve years but I'll offer you six, and there's a rationale for every offer.

It's hard to say because the sentencing is so complicated. In a straight acquaintance rape with no prior history, usually before the prelim they get the best offer, which would be low term state prison, three years minimum, mid-range is six years, or a maximum of eight. I would never give probation on a rape case. I think you would be hard pressed to get a plea to rape and just give probation. But, priors, weapon, multiple acts, make the sentence higher.

The general policy on victims under fourteen is if anything goes inside them it is state prison. Only in extraordinary circumstances would it be county jail and probation. I will negotiate time, but not charge. I want the rap sheet to represent the conduct.

The policy is penetration equals prison. It is not a hard and fast rule office and if you go to different offices you will find significantly different dispositions because jurors and crimes differ in each jurisdiction. In some areas they will file everything available and then give lower sentences. I don't file everything just because you can. It's a math equation. This conduct with this equals this; that's plea agreements. I do all plea agreements. Defendants take these offers because every sex crime is full term consecutive so five counts of rape equals forty years. Two strikes and two forced counts for sixteen years; or, if a life case some pleas before a life case today I will offer you two strikes and sixteen or twenty-four years on a life case. We shouldn't be trying one count of something. That's lightweight, and not appropriate for rape. You should file all charges you can legitimately file on those cases. I don't reduce it. Statutory is the only non-registerable as a felony.

That happens frequently where we're past the prelim hearing and they don't want her to testify or family members still love the defendant and we're forced to give him a lighter sentence. We are typically negotiating on the type and length of sentence rather than charges and counts. But sometimes we will negotiate on charges and counts. If it's borderline or unlawful sex then we will bargain for registration. I go to my supervisor and confer. S/he will ask what I think and ultimately it will come from [the supervisor].

There is not a uniform type of plea. If they are pleading before trial there is often a reduction in the number of charges. For me sexual assault presumes state prison unless it is something like a sexual battery and the touching is not super serious.

I don't think there is such thing as a common plea. If we have someone facing life and it, in my opinion, truly should be a life case but we don't want to put the victim through it I may give the defendant a glimmer of hope where they might get parole in their seventies. If it's a life allegation the office wants us to file it when it's there. But sometimes you know it isn't a life case. If a guy has no prior record and there is no penetration but fondling maybe you give him eight years. Negotiations center on the sentence rather than counts or charges. Sentence oriented is where I begin, but I will also look at the charges.

That is hard to say. The common thread is to get registration, 290 PC. That is a common requirement in all sexual assault pleas. Even in non-child cases in a pre-preliminary hearing we'd offer five years—post-prelim, eight years. It creates uniform sentencing policies.

When cases are first brought before the court we give the best offer. It's often not pleading to every single count but some version of the counts for the best sentence. We look at the seriousness of the crime, the defendant's rap sheet, and we will keep the offer open until prelim. The minute the victim has to testify and relive these horrors then the offer goes up. If the case gets weaker after witnesses' testimony I don't have the luxury to change that way. Whatever we file we try to get. We usually don't plea down to a

lesser charge. We put those charges in the complaint because we believe the evidence demonstrates it.

I don't know. It truly depends on so many different factors. If a weapon is used and there are aggravating circumstances it's always going to be a prison sentence, not probation. So you're negotiating over the amount of time or type of charges they will plea to; actually, not the type of charges because when we negotiate the plea you still want the plea to be representative of what the defendant did. If it's a rape during a burglary plus the use of a gun he's looking at twenty-five to life.

I don't have authority to make offers. I go to my Deputy-in-Charge. We have a chain of command. It takes a long time to come to a decision on that. We have to interview, talk to the detective, and have many discussions before making an offer, if we make an offer. Defendants seldom plead guilty as charged, and that's only because they don't like our offer and they want the judge to make it. On sex crimes cases there is usually a lot of time involved. The majority are life cases because of the One Strike sex law, which allows for life sentences in certain circumstances.

The two factors we consider are the amount of time in custody and whether we are asking for 290 registration. The biggest factor is whether and what they plea to. Everyone is obsessed with 290 forever. You can be run out of your neighborhood. It follows you for the rest of the life. It is impossible to get it removed. Multiple misdemeanors can get it such as indecent exposure or sexual battery but you can get out of it because it is presumptively registerable.

I always try to get a sex count with registration and, if anything, we'll reduce the time. Sometimes we'll even give probation. With the party girls I gave the defendant probation. He wasn't seen as a predator like the guy grabbing girls off the streets; he was more of an opportunist. He saw the girls having sex with everyone else so he thought why don't I. Here we bargain for the amount of time more than anything else. There is no reduction of the charge; a spousal rape is a rape. With the kids there is some maneuvering with regard to the charges. With continuous lewd acts we give one lewd act charge for each act. But we have to assess the harm to the child if s/he is forced to testify again at trial. We think what is appropriate in terms of the sentence. For me, it was trying to ensure that the defendant was going to go away for long enough that the victim would be well into her adult years before he got out.

With adults, it would be a discussion of the amount of time, not the number and type of charges. We are required to file any allegations that could apply. I tend to believe that less counts is more. A lot of our cases settle and it has to be that way. Even with corroboration you have kids that you know will not be able to testify, or it may be a very weak case. A lot of the child molestation cases end up with probation, especially if they involve family members. When you get to the cold hits or the life cases, we're making offers that are essentially life cases anyway.

If someone comes to you and says I will take fifty years we will do it nine times out of ten, even if you could take it to trial and get two-hundred and fifty years.

Our offers aren't made by us. We need the Assistant Head Deputy or Head Deputy's approval to make any offer in sex crimes. The approval must be in writing as a result of the Pomona case [People v. Curtis Bernard Harris<sup>112</sup>].

We negotiate on the sentence most of the time. Charges can come into play if we are dealing with borderline ages such as fourteen through sixteen. Anything under age fourteen is a straight felony because of the age of the victim. If the victim is fourteen or fifteen and the defendant is eighteen or nineteen we could file a separate charge of unlawful sex with a minor, which isn't a registerable offense.

For the majority of our cases the negotiation is over prison versus jail or probation. It is not as common to do the amount of time. There are certain types of offenses such as penetration with someone under age fourteen; we are likely not going to offer probation on a crime like that.

Unless I have problems of proof, I go for long terms of state prison or life sentences. But there are the occasional exceptions. We take a lot of these cases to trial because they have nothing to lose. It is not common to get a plea on a sexual assault case. We may come to an agreement on a determinate sentence: let's say twenty or thirty years rather than life. There are times where we will resolve those cases for a determinate, but a lengthy, lengthy sentence. But we do seem to go to trial a lot in these cases.

If it is a weak case and we have an uncooperative victim there will be a better offer. I had one case where the defendant orally copulated a seven-year old twice and that case settled for thirty-four years.

Sometimes we have to add charges in order to get to a certain number and we can drop them. But often there are charges that we really want so in those cases we are negotiating time to serve in prison. We want the charge to be indicative of the conduct and we want to ensure that the charge falls within purview of Sexually Violent Predator Act.

We look at the sentence, the counts, and the charges. We look at exactly what he did. Not all sexual assaults are created equal. Sexual relations between a twenty-four year-old guy and a sixteen-year-old girl are going to be treated differently than an assault by a twenty-four year old on a five-year old girl. What we negotiate will depend on the heinousness of the crime, whether the defendant has a record for this type of crime, and is likely to do this again. We know that not all rape cases are life cases. Your garden variety rape cases are not life cases. You may have a rape case that is a probation case but generally we are looking for prison time. But if there is not a lot of corroboration, I may think that I would rather have a bird in the hand than in the bush and get five years of probation and registration as a sex offender rather than an acquittal at trial.

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<sup>112</sup> See footnote 104.

I would say that acquaintance cases are more likely to plea. All the ones I can think of have pled.

We say if he takes it [a plea] today then I'll give him probation. If you wait too long all of your bargaining chips are gone. Most plea agreements revolve around the type of sentence, whether prison/jail/probation, as well as the type of charge that carries the registration requirement. For defense attorneys it's a big thing [sex registration] but suspects care more about time. They're not thinking ahead.

In summary, other than a consensus that getting defendants to register as sex offenders is an important component of plea-bargaining, prosecutors' statements indicate that plea-bargaining strategies vary depending on the courthouse and the supervisor. Although they noted that sex crimes are notable for lengthy sentences, this was most often in relation to child cases (recall the "penetration equals prison" adage if the victim is under fourteen) or those involving weapons and additional crimes—such as home invasion, robbery, or burglary—which are typically associated with stranger rape. Only two interviewees specifically addressed acquaintance rape in relation to plea bargaining, noting that—generally speaking—a plea prior to a preliminary hearing would be a low term in state prison of three years, which should increase if the defendant pled after the preliminary hearing; and, in their experience, acquaintance rape defendants always plea.

Considered together, the invisibility of nonstranger sexual assault amidst an emphasis on child and stranger cases in discussing the criminal justice endpoint of sentencing and plea bargaining is consistent with the repeated emphasis that "she said/he said" cases are the cases which are the most difficult and the most often rejected by prosecutors. However, this must be reconciled with other interrelated filing and sentencing issues raised by prosecutors, such as: (1) suspects often plea when they see the victim do well during the preliminary hearing; (2) some attorneys are attracted to sex crimes in search of lengthy sentences and will decline to file charges in cases such as acquaintance rape that will not necessarily net that result; (3) to what extent must a prosecutor's assertion of a desire to spare a victim the trauma of testifying if s/he is

uncertain of the outcome be countered by the notion that victims have a right to their day in court? Turning to the future, the final section describes prosecutors' recommendations as to how the criminal justice system can do better in the prosecution of sexual assault.

## **HOW TO INCREASE SUCCESSFUL PROSECUTION OF SEXUAL ASSAULT**

Have detectives and DAs dedicated to the job who are patient, nonjudgmental, and come into it believing victims and looking for ways to find corroboration. I find that if a detective already has an opinion it affects the investigation.

The final question focused on improving service provision to teen and adult sexual assault victims. The most frequently emerging themes are a need for only those people who want to work these types of cases to be assigned to them, better front-end investigations by law enforcement with regards to interviewing and evidence collection, faster processing from the crime lab in sexual assault cases, and juror education:

Law enforcement needs to do more investigation into the defendant and his past because I think for most of these victims they are not the first for these guys, it's just that we don't know. If we had other victims to corroborate it would help. The only other way to get our prosecutions better is to have better victims. Without good victims cases don't get filed. I had bad victims in the party girl case, but I had enough victims to show the defendant is bad. You can overcome these things with a thorough investigation.

If I had just a little bit of money and resources it would be audio-recording in DV cases. Now with the state of the law and given that we know that DV victims recant, why are you not taping these statements from the get-go? Another thing: give law enforcement officers the training they need to know how to talk to victims and how to interview children.

Public education. Jurors have a lot of misconceptions about what a sex crime victim is going to look like and sound like. Many believe that there is going to be injury and there is going to be DNA. We can try to get this across during jury selection, but judges often don't give you enough time to do this. One thing I always ask is whether they can convict based on just one person's testimony. When they step into the box it's like they lose commonsense and they expect more than they would in any other type of case. The second thing would be detective training. They send people in here who don't know



what they are doing. They seem to have a difficult time finding people who are willing to do sex crimes.

If we had patrol officers who understood the big picture and crime lab technicians who followed up quickly. If it's a known suspect they do not rush. If a stranger comes up it's a higher priority. If it's his word against hers they are lower priority.

Much patrol questions are lacking. You get inconsistencies because the initial deputy wasn't listening and didn't take detailed information. I find they don't ask a lot and then the information is in the supplemental report but every little thing that might be off is one more thing the defense can use to undermine her credibility.

Our unit has more admin duties so if everyone had an assistant we'd get everything done. We have orders we have to fill out. We need one secretary dedicated to VIP. Making us a special unit was long overdue. It used to be any felony deputy could have a smattering of rape, gangs, and how on earth can you become an expert in a particular kind of case because they're such different types of victims? LAPD should have a unit in every agency. We would get more suspects that way if they knew how to handle interviews.

More education for lawyers and law enforcement. Training also. And more people to do the job. That's a problem when you're one lawyer and there are twenty-five cases and forty-five victims. How do you truly service anyone? We need training to understand victims and the best way to assist them to further success in court. You can't just draft people to do these cases. Each lawyer in my unit might have 1 stranger case out of 149 open cases. Many more females want to do these cases but some victims do better with a male prosecutor.

We need to be better with physical evidence and crime scene investigation. There's a whole team of investigators in homicide that are canvassing for witnesses, doing forensics, and taking pictures. If we did that with sexual assault it would be better for prosecution.

All suspects who are interviewed should be videotaped. We want the jury to see how they react as well as hear their words. Some agencies do it and some detectives will do it, but it just does not happen enough. We can't fabricate evidence and I can't change who my victims are and make them someone they aren't when they walk into court.

The overall issue is people are scared. You can't promise people they are going to be OK when they've been coming and sitting in court all day and waiting for something to happen and the defendant's family is glaring at them. I can understand why the victim is scared at how useless we are. We always say if you feel someone is following you call 911 or if you feel scared we can have officers escort you but at the end of the day they have to walk out the door. Sometimes, also, and people don't realize, they think they contributed somehow; or that it's their fault, so they hesitate. Also, law enforcement needs to listen. Unless it's a 911 situation they go to the station and wait hours to make a report.

Education. Women will wait past the ninety-six hours when you can collect DNA. They need education to say things immediately when there is a critical small window to be able to collect evidence. We also need greater resources on the front-end investigation; before arresting get all of that done. If the case is immediately taken and treated at its inception the way it's treated once a DA gets to it and we are saying these are the critical things that need to happen we would be more successful. A report is made, and by the time report is written and signed by watch commander and the detective reads it how much time has gone by? The critical ninety-six hours after it is reported makes or breaks the case if a detective gets to the case right out of the box who is trained properly not to make their own judgment calls without victims. They'll send a few away saying 'Oh that was your relationship thing. You should go and work that out.' You get that a lot with homeless women and prostitutes, and then they re-report and then the case becomes fileable and I have to explain why she says the man with the red hair at the front desk said to go home. The front end is the most important. Patrol officers with a few years on taking reports that are incredibly complicated. You need to get the victim an exam and an advocate. You're going to need to get to someone who can call at the station to the guy saying 'I'm feeling this way about what happened. I know I had a drink but why did this go down?' So when he's interviewed a week later you can discount what he said with a pretext. It's those first hours that are critical and most cases are mishandled. This is no offense to patrol officers but there is a lack of training and understanding. We aren't there in the first forty-eight hours. By the time cases come to us the damage has often been done and we can't un-ring the bell. The things I'm asking a detective to do weeks and weeks later they should do immediately. Many detectives do not understand what happens in the courtroom. When my detectives go through a case with me I make them list through the case with me. They say 'Oh my god, this is what you need to do,' and from then on they are a different detective. Many haven't been through a trial and they don't get the burdens and hoops we have. They just feel 'Oh, the DA is lazy and can't file and won't do their job.' They don't understand the onerous burden we're doing. Often I'm calling regarding a 288(C)(1) saying 'I need you to ask the defendant how old he is because I need a ten year age difference. Ask the defendant how old he thought victim was.' Otherwise how do I prove he knew she was a certain age?

It takes a long, long time, especially with LAPD, to get DNA tested. We need to have the ability to get physical evidence more quickly because the evidence will disappear if you don't strike while the iron is hot. And, for example, if the victim said that she bit the defendant the detective should take photos.

We are personally responsible for the crimes that occur in our community. If we are here prosecuting crimes then we should be preventing them as well. It all goes back to outreach.

Have cameras everywhere! That's a joke. As we have seen in the news over the years that video doesn't even do it always. Beyond reasonable doubt is a very high standard. I am not embarrassed to say I am always surprised when we get a conviction because none of us were there but we are doing the best we can based on what we know. To jurors: don't

get anxious about whether you are doing the right thing. As an adult you saw the witnesses testify so if you can sleep tonight you can come back guilty.

It is also about budget. This office has evolved over the last ten years with resources. Our investigators are good, better than your routine patrol people. They are usually experienced. In terms of money we could always have more DAs.

One problem is that since Prop 69 we take DNA samples from felons but samples just sit around. If all samples were entered into CODIS, LA County would have one solve per day on cold hit cases; this was what the media coverage said from Prop 69 ads. It is shameful that samples are sitting around and not being entered into the system and there is a responsibility to victims to do that. Funding for that should be a huge priority and that it is not is disturbing. More education is needed out there. Victims need to know what they need to do, for example, in drug and alcohol-related cases. If the victim knows there is only a six-hour period [to catch the drug in their system] they will be more likely to report immediately. If they are unsure, they should report anyway and get that sample. Many SART nurses recommend taking a urine sample yourself. That creates chain-of-evidence problems but it's better than nothing. I had a friend ask me to prepare a presentation about date rape at a catholic school about drug rapes. They never got back to me and my feeling was it was too graphic and it was denial-based. They didn't want this kind of presentation in the school yet it is the precise thing that it going in this age group. It globally speaks to a need for education.

We need better equipment. Media carts in the courthouse are broken or missing a cable. We've made some progress technologically. We should have a paralegal assigned to us because huge parts of our cases are based on past behavior. We use time building cases by looking backwards. A victim advocate is critical to play the gap when the DDA is not available. The victim advocate needs to be there watching the defendant. When the victim holds up at prelim defense attorneys know they have something to be scared of. Some of my colleagues need to be better trained as to how to use victim advocates. They are an underused and undervalued aspect of the office. And [some need training regarding] the mandatory 1707 form. The victim needs to be notified upon the suspect's release.

Start at the grassroots levels. Make an initiative where you go around and start teaching people. Part of the problem is the melting pot and a lot of cultures want to keep things in house. We need education that it is OK to report.

SART roll outs where DAs go out during the exam. The DA needs to be a part of the investigation from the beginning. You can pin down on the victim right away. The initial story when injuries are fresh is the best story. Victims need to be educated. By the time we get a case we hear he has done it a bunch of times but never reported. Education. [If we did roll outs] Victims would not be re-victimized and traumatized by process. And in stranger cases they should not have to face the suspect in court.

I need more people desperately. For example, I am trying to do a DV rape currently and you can't prepare a case with two minute increments. I realized there was a prior victim. The guy had been calling her from jail and they were having one hour long conversations. The cases I am working on I do not have enough time to attend to. I've been working early morning through late evening every night and I have a new trial starting on Wednesday of a rapist who raped the sixty-five year old woman he befriended. He has six prior arrests for rape.

The problem we have is lack of outreach. How to fix that? We do not know who to target. Victims are unaware that they should report. I have victims who report only when they see on TV that a crime is discussed. Schools should be outreaching and educating. Outreach is very bad, especially in this community. Gangs and drugs is the focus here; sexual assault is not discussed as much. Parents do not know or they are doing it. Often they are not English speakers and not comfortable with the system. A better showing on law enforcement's part in the community to show there is an effort to get these victims. It's not always about funding. Perhaps it's mindset. Their focus is not on these cases. I do my own outreach. I go to [a local] high school every month.

I've stopped looking at people as promiscuous. If young ladies go out then they have to live with the consequences of drinking. I think it is wonderful that we have nurses who encourage reporting; maybe it will make boys afraid. But if she doesn't report right away, SART right away, then all of these things are questioned. And it's not their fault. Jurors make a victim toe the line that's been created by the media, movies, and books. It creates a scenario where women go through horrible things but can't get back at him through the legal process.

Given this is the computer age and considering victims are young and perps are not usually seventy-year old guys, all of these people have computers. There must be more forensic evidence on these computers. Detectives and DAs need to be more computer savvy. We have cell phones and Blackberries but prosecutors and law enforcement are still stuck in the 1980s before all of this popped up and evidence is out there on the Internet. They're young people who are computer savvy and we should be computer savvy too.

There could be improvement in so many areas. You get caught up in one type of case, for example, rape by intoxication of high school girls, and you think we should be educating high school girls and boys. We have our own investigators so once a case is brought to us they work on it as well. We need more investigators. We have all of the support that we need, but that would make it a bit easier. We're given pretty much everything we need to successfully prosecute.

I'm not really sure. If the evidence isn't there, there really isn't much that we can do with the case. It would always help to have more prosecutors and more investigators, but even that would not help if the evidence isn't there. I'm not sure how to answer that one. Because of the adversarial nature of the process, we may not be able to improve the process. I would like to make the experience better for victims, but I understand that the

defendant has constitutional rights. Also, we have certain cultural issues. Certain cultural groups are more passive and are outright uncooperative. So, perhaps some cultural outreach about the fact that these are crimes and that we do prosecute them.

Fix the rape shield law. I think the only loophole is that even if the evidence does not get introduced the defense is not precluded from asking about it. Victims are the ones who are put on trial. There is inconvenience, their privacy is invaded, they are held up for scrutiny, and they are shamed, sometimes by their own family members.

We need more investigators. On the scientific end, DNA is our best friend and they have a huge backlog of DNA to be tested. We need more people in the lab to test the DNA quickly. Right now they are not really concentrating on what they should be concentrating on: testing all of the kits in the backlog rather than prioritizing open cases. What would also be nice would be a multi-disciplinary team to respond to all sexual assaults, even in terms of interviewing. Forensic interviewing is fabulous but we don't do that here even in our child cases.

Quicker DNA processing. We have cases that are filed and we are still waiting for DNA. I would like to have photos of everything and audio taping the initial interviews with the cops and the SART nurse because reading the notes is not as good as viewing the video. SART nurses always tape record them and these are great. Detectives don't always do this but it is nice when they do. And photos for everything help paint a picture for the jury.

I would have my own paralegal who could assist me with all of my work. One person assigned to one DDA; someone who could do your research and coordinate all of your witnesses. I know that this will never happen, but it would be at the top of my wish list.

We have good resources for trial preparation. We have great investigators. What we need is more support staff for the DAs.

We are always fine-tuning how institutions start grabbing and working with it once problems are identified. It would be nice if we had better testing.

I was working in [a Branch] eighteen years ago and a judge said that a prostitute cannot be raped. There is still a prevalent attitude that a wife cannot be raped.

If you're assigned to handle these cases you need to learn how to develop rapport with victims and make them feel comfortable. Let them know all of the possible outcomes, that whatever happens we're in this together, and let them know that they're doing the right thing. We make sure they're in counseling and getting all of the help they need and that you'll do everything you can to fight for them.

People don't critically think anymore. They're not interested in making complicated decisions. If they don't like your kid or adult victim then jurors like the defendant. The intellectual thing is making decisions, it's passing on them.

Unfortunately I don't know what we can do because we're the very last resort. We build up the victim and tell her she's OK because we believe her, but that message doesn't necessarily spread farther to make social change. We try to make it as comfortable as possible but how comfortable is it?

### **CONCLUSION: INTERVIEWS WITH LA COUNTY DEPUTY DISTRICT ATTORNEYS**

Interviews with prosecutors from the Sex Crimes, Family Violence, and Victim Impact Program of the Los Angeles County District Attorney's office provided insight into how they approach sex crimes in terms of building rapport with victims, assessing victim credibility, and working with law enforcement, along with the factors that impact whether they file charges and how they negotiate convictions. Whereas the two approaches to sexual assault victims evidenced by LAPD and LASD detectives were "innocent until proven guilty" and "guilty until proven innocent," deputy district attorneys' approaches to sex crimes are best characterized as those who "look for corroboration" and those who "look for reasons to reject." They related the majority of their decision-making to the likelihood of a conviction and jurors' preconceived notions of what constitutes rape. While most interviewees mentioned the continued belief that they should prosecute cases that meet the legal definition of rape but do not fit the stranger rape stereotype given their ethical mandate to file only the cases they can prove beyond a reasonable doubt to twelve jurors. Like their LAPD and LASD interviewee counterparts, prosecutors reiterated that individuals must want to work sex crimes and be specially trained given the investigative complexities and the societal biases that must be countered for a successful prosecution.

Prosecutors provided further context to the pre-arrest charge evaluation process in sexual assault cases described by LAPD and LASD detectives. They attributed the presentation of cases to them prior to arrest to the consequences of delayed reporting, office policy that dictates that filing decisions be based on a trial sufficiency standard, and office policy that requires a pre-

filing interview with victims of sexual assault to ascertain whether there is independent corroboration that a sexual assault occurred. They stated that although pre-arrest charge evaluation would be unlikely in a stranger rape because the victim's credibility is less likely to be challenged and the perceived threat to public safety would translate into the police making an immediate arrest, they do not control the decision to arrest and that the discretion to make that decision is law enforcement's in all cases. Although this is technically true, the findings from this study reveal that in practical reality decisions made by prosecutors do influence law enforcement outcomes. For instance, many detectives—especially those with a “guilty until proven innocent” approach to sexual assault victims—base their arrest decisions on the DA's filing standard of proof beyond a reasonable doubt to convict at trial instead of probable cause. Moreover, the LAPD's official clearance policies incorrectly interpret the FBI's Uniform Crime Reporting requirements to be based on prosecutorial charging decisions. The FBI has provided oral and written confirmation during this study that for UCR purposes case clearances are based on probable cause to make an arrest and the district attorney's filing decisions are irrelevant.

Returning to the realm of filing decisions, prosecutors emphasized that their filing standard is proof beyond a reasonable doubt, and stated that although vertical prosecution is the goal, it does not always occur in practice. All agreed that the consequences of shows such as *CSI* are juror pools that demonstrate unrealistic expectations of when, where, and why DNA may be present in a case, along with the time it takes to receive results from the crime lab. There was also consensus that cases involving DNA and suspects and victims who are strangers are the closest one can come to a slam-dunk, but prosecutors varied in the extent to which they emphasized DNA as relevant in nonstranger cases. While on the surface DNA supports a consent defense, prosecutors with a “look for corroboration” approach and detectives with an “innocent

until proven guilty” approach emphasized that DNA can be helpful in dealing with a suspect’s consent defense.

Finally, in the realm of negotiating convictions, other than a consensus that getting defendants to register as sex offenders is an important component of sentencing, prosecutors’ statements indicated that plea-bargaining strategies vary depending on the courthouse and the supervisor. While they noted that sex crimes are notable for lengthy sentences, this was again most often in relation to child cases (recall the “penetration equals prison” adage if the victim is under fourteen) or those involving weapons and additional crimes—such as home invasion, robbery, or burglary—which are typically associated with stranger rape. Only two interviewees specifically addressed acquaintance rape in relation to plea-bargaining. In terms of increasing the successful prosecution of sexual assault, prosecutors reiterated a need for only those people who want to work these types of cases to be assigned to them, better front-end investigations by law enforcement with regards to interviewing and evidence collection, faster processing from the crime lab in sexual assault cases, and juror education. The implications for policy and practice are addressed in Section XI.



## SECTION X

### IN THEIR OWN VOICES: SEXUAL ASSAULT SURVIVORS' EXPERIENCES WITH THE CRIMINAL JUSTICE SYSTEM

I had been with him for three years [when I was first raped]. I remember when I walked into the hospital they were asking questions. They asked if I was raped and did he force you to have sex and I said yes. And I said most of the time he did force me to have sex but at the end he told me it was always my fault and that was how I wanted it. He was always confusing and always put the blame on me. It's been six weeks since it<sup>113</sup> happened but I'm still scared and it hurts because I'm pregnant. I'm just realizing through my [therapy] sessions what kind of person he is.

The police never explained to me what they were trying to do so I never understood and I never realized they were trying to help me. They advised me not to talk to my boyfriend, which I ignored.

When I mentioned the detective's name [to the advocate] I was told he's notorious for not believing victims' stories.

As we analyzed sexual assault reports and proceeded to interview law enforcement personnel it became clear that we had to hear from victims directly given the frequency with which victim cooperation was cited as a contributing factor in sexual assault case attrition. We are very grateful to Gail Abarbanel and the Rape Treatment Center at the Santa Monica UCLA Medical Center (RTC),<sup>114</sup> Gail Pincus and the Domestic Abuse Center (DAC),<sup>115</sup> and Kim Roth and the Valley Trauma Center (VTC)<sup>116</sup> for partnering with us to ensure that victims had an opportunity to share their experiences with regards to the decision to report to law enforcement, and their overall impressions of the criminal justice system.

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<sup>113</sup> Her husband stabbed her while they were in a car and she jumped out of the moving vehicle to escape.

<sup>114</sup> <http://www.911rape.org/>

<sup>115</sup> <http://www.domesticabusecenter.org/>

<sup>116</sup> <http://www.csun.edu/vtc/>

## **Selection Criteria.**

To ensure that victims would not be harmed by the process, agency leaders identified ongoing female therapy clients age eighteen or older who were sexually assaulted by a male perpetrator and; (1) not in a crisis state; (2) capable of self regulation; (3) had an established social support system; (4) did not have any co-occurring diagnoses that would preclude functioning in a group setting. In consultation with extant literature and the victim advocates/clinical experts at the respective agencies, we ascertained that spousal/intimate partner rape victims are less likely to share honestly in a group with other rape victims given stereotypes and perceptions that spousal rape is not “real” rape and less likely than other victims to report to the police. Thus, we conducted a focus group at the DAC solely with spousal/intimate partner rape victims (N = 10) to validate their experience and increase the likelihood of forthright self disclosure about the situational context of their victimization and the decision to report; the SMRTC<sup>117</sup> (N = 3) and VTC focus groups (N = 4) included victims whose perpetrators were acquaintances or strangers. To ensure anonymity and confidentiality we did not collect any sociodemographic information about the seventeen women. However, it is important to note they were a diverse and multilingual group in age (early twenties to late forties), ethnic background (white, African American, Hispanic/Latina, Asian, Middle Eastern, and multiracial), religion (Christian, Jewish, Muslim, non-affiliated), and current relationship status (single, married, engaged, and in a relationship). More of the Domestic Abuse Center’s participants reported having children than those from the other two agencies.

Questions focused on the decision to report and their cooperation with the criminal justice process, but given the emotionality and personal connection to the topic the flow of

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<sup>117</sup> Given scheduling conflicts we conducted one-on-one interviews at the Santa Monica Rape Treatment Center.

conversation followed the tone set by participants. It is important to note that all participants emphasized one of the reasons they decided to be a part of this study was the hope that any insight gained from their experiences will inform improvements to the criminal justice system's service provision to future sexual assault victims. Before addressing the themes to emerge from the seventeen women's stories, the following section provides context by introducing Kelly,<sup>118</sup> Emma, and Leah, three women who reported their sexual assault to either the LAPD or LASD.

### **Kelly<sup>119</sup> – Acquaintance Rape (Co-worker)**

My friend got me an interview with this big club in [Los Angeles]. I got an interview there and immediately got hired to do bottle service. When I got hired the manager gave me my shifts and the logistics of the job. Another guy who worked there was a manager as well of the bottle service and would assign us to tables. He was the guy who raped me. He would assign us to celebrity tables. I came to know there was an upstairs place. Alcohol stops serving at 2:00 AM but the VIP tables after hours get served alcohol. One night the guy told me there was a VIP table that I was assigned to and I was stoked. I was just going to go with it. He told me he needed me upstairs to set up the table and the glasses and get the mixers. He goes up there with me to let me in. It is a locked room so he had to open it for me. I went in first and checked out the place. I had never been in there. It was so cool. I checked out my surroundings. There was a big balcony that looks over the stage. It was crazy. At that time the guy [her rapist] had come on to the balcony. We bullshitted a little bit. I tried to walk into the room [to exit downstairs and get back to work]. He stopped me and said, "It is alright. They [the VIP guests] won't be here for a while." I told him, "At least let me clean and then I will set up." He said, "No it's alright. Just stay up here."

Anyways. A little time passed, whatever. After about five to ten minutes I said I should leave. He stepped in front of me with a flirtatious approach. And as I backed up my back hit the railing. I felt awkward. I told him "I am going to go in and go down stairs." I started to walk back in. He grabbed my wrist and said, "No. It is OK, you do not have to go." Then I started to make up lies like I needed to get ice, anything to let me leave. He swung me toward him and it caught me off balance. He threw me on the couch and advanced towards me. He was bigger than I was. I tried everything to get him off me. No one could hear me scream with the music and all. No guards. He was on top of me. I told the detectives he held my arms down. I had bruises on my arms, a handprint on my back, and scratches on my thighs. I tried to push him off at his waist and shoulders. Nothing was working. I didn't know what to do. He said, "You like this, you like this, you like this." He got off me and smiled at me and I don't remember what he said but it was something like "You like this." He got up. I knew

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<sup>118</sup> We use aliases and omit identifying information where relevant and possible to maximize the women's confidentiality.

<sup>119</sup> What follows are the women's own words, exactly how they said it.

there was a bathroom or closet in the corner. He walked over to it. As soon as he was out of my sight I knew I had to leave. I knew I had to run as soon as he disappeared. I didn't pull up my thong. I booked it and I got up and ran down the stairs and there is a videotape of the stairwell. They have a tape of me booking it. They had the gates up for the concert [that was scheduled that evening]. I ran straight into it. I knocked the barricade over and ran out the exit. I didn't know where I was going but I just wanted to leave. I ran right into the other manager who hired me. I was crying, "He raped me, he raped me!" I was fucking terrified. I didn't want to be quiet about it. I just kept saying, "He raped me." They just thought I was crazy and making too much noise. They tried to calm me down. They tried to take care of it on their own. The guards went upstairs to find him. An hour and half later they called the cops and they arrested him and the cops went and checked out the area. They came back days later to take pictures. They brought me to get checked out [a SART exam]. They put me in the back of a cop car. I remember coming in and getting the exam. There was semen in me, on me, and I was torn. All this crazy stuff. I was only 21. You have an intuition of what is right and wrong. I asked the female cop to come in with me. I wanted the other witness. Maybe I watch too many cop shows. Me and the female cop and the doctor saw the bruises and scrapes. Then they told me I could go home and they would set up an appointment for me later. They did not give me any other information. I then got a call from somebody, maybe my detective, who asked if I was going to press charges. I said of course I am going to press charges. I knew something was wrong and the guy was gonna go to jail. Isn't that what is supposed to happen? They said OK you have to come in and answer some questions because all we have is the police report. That wasn't my true testimony [what was in the original police report] because I was crazy and upset [right after the assault happened]. I met my detective who handled my case. He was not a nice person. He wasn't an extra dick but he was quick paced. "Tell me what happened." That is all he said when I walked in. No care for me as a person. I feel that if he was a little more concerned maybe I would have opened up more. It was very uncomfortable. Just me and him in the room. No female. I did not want to be alone with a man.

Then the next step was to meet with the DA. Again I went to the detective's office and he drove me to the DA's office, just the two of us. I didn't want to be alone just with him but I didn't want to tell him that. Then the DA was a male. It was just me, the DA, and the officer behind closed doors. It was a cold room. It was so terrible. Me and the detective sat on one side and the DA sat on the other. Tell me your story [the DA said]. He told me, "I see these things all the time. It is your word against his word. We don't have case. End of discussion." The detective told me he would try to push the case forward but the DA said there was no case and that we could not go to trial. Then the detective sided with the DA and said, "I'm sorry sweetie. If he cannot try the case there is nothing you can do. Let's go back to the office and you can continue on with your life." [She thought] So just because the DA said there was no case, it is over? [She stated to the DA and the detective] "His [the suspect's criminal] record is decided because you think there is not a case? You two people get to decide? So there is nothing you can do?" The DA said, "I'm sorry. It is your word against him. He could say that you wanted it, and you changed your mind. I'm sorry, but that is the reality of how it is going to be." I was embarrassed to cry. The people who were supposed to help me were not helping me. Then I told my therapist about my case and she was mortified. She told me "You are rare. Most people do not tell the police, and you were turned down

when you tried to do it.” I thought, “Shit, I was right. I shouldn’t have reported it. They are right. What am I supposed to do?” It was a devastating process. I talked to my therapist about it. [An advocate with whom she spoke] used to be an attorney. She is a wonderful lady. She helped people get logical lawyer advice. She changed my life. She said she’d make a call and see why they did not hear my case. She worked some magical cure and got me another DA. It was a female. She said, “It is a tough case. But they are all tough. If you want to push forward I will do this for you.” [The DDA] pushed it forward for me. I had a DA and a lawyer who were backing me and sticking with the case in case I wanted to pursue it civilly. She started to push forward. We started out with the easiest thing. They wanted to try to get him to admit it by doing a pretext phone call. I did not want to do it, and then I said OK. I guess. Whatever. They came to my house and plugged it into my landline. They didn’t coach me that much. Any other person would have froze. I wish they would have taught me how to do a pretext. It was mortifying.

I called. They [the police/detective] told me to tell him I was leaving town and wanted to know why he did it. I said “I’m gonna go back home to [out of state]. Why did you do it?” He said, “I do not know what you are talking about. Why did you say that? They think that I raped you.” Oh, and his wife answered the phone. I got so emotional thinking that this son-of-a-bitch did this to me; meanwhile he has a wife and maybe a family. I was in such shock when she answered the phone. In the middle of the pretext call I then heard the detective mumble to another cop “She is obviously lying because she found out he was married and she was upset he was married” [implying that the victim had been having a consensual affair with the suspect]. I was upset that he had a wife because of how disgusting this is! I felt so bad for her that she was going to find out that somebody was raped by her husband. I was so upset. And that is what he said! My detective! The person who is supposed to be on my side! He then said, “She probably had a big crush on him.” I was on the phone [trying to do the pretext call] when he was saying this. So I tried [to continue] talking to him [the suspect] and he said “No, no, no.” Then he hung up on me. Then we had to set up a pretrial [preliminary hearing]. I said OK, whatever. It was black and white in my mind and I knew there was nothing they could do to catch me lying because I was telling the truth about everything. I was gung ho [about prosecuting].

We [the victim and the DA] went against what the detective wanted. He was already mad that he had to come back and do anything further on the case. I was still set on pushing charges and the DA was gonna back me on whatever I wanted. Even if we were gonna lose, she was gonna do it. She recorded a number of questions for the pretrial. I didn’t talk to the detective again. The last time I saw him was during the pretext. The judge said I had a case. He could tell I was telling the truth. The defense asked me double the questions, but I answered one question at a time. I answered all the questions and the judge said there was enough evidence. The only people who were lights at the end of the tunnel were the judge, [her advocate], and [her DA] who took the case initially. [Another DA] took my case next. She didn’t waste any time. She was a spitfire lady. Also, the manager who hired me was on my side. He said he saw [the suspect] grab my ass. He was gonna back me. However, during the deposition he did a 180 and said that the victim is a really good actress, blah, blah, blah. They had to have been paid off somehow. Girls from the club said I was kissing other girls at

the club. People were lying. It looked like they were paid off. I was only there for two to three weeks! No one knew me.

[The suspect] said that I wanted it. He was married, I had bruises, and he had done it to me while I was on the clock. There was this bad stuff against him. At the end of the day, they decided [his defense] we had so much evidence that there was a better chance he would be convicted so they took a plea bargain on the day of trial. He got two to three months in jail, five years probation, and a fine. He did not have to register as a sex offender. He got battery with intent to harm. He pled no contest. He did not want to plead guilty. I wanted his penis to be cut off, but they do not do that here. He was supposed to get deported because he was not a citizen. From what I hear, he just bought a nightclub. He did a little bit of time, but never got deported. And he did not have to register [as a sex offender]. They wouldn't have taken the plea bargain [otherwise]. Everyone was in my ear telling me to take the plea saying, "If you do go to trial, he might be found innocent. Some jail time is better than no jail time." I had to decide the morning of the trial. I had to decide right then.

Even when they want to help you they do not push for it. It does empower you because you have to take care of yourself. Even when they think that they are helping, they are not. They always give you the negative. "Alright, if you want to go to trial, but he could get off." Everything is negative. Even when you think you do have rights, you don't. It would have been fine if they thought my case was a wash but at least let me have the power to go to trial. That is such an important point, to see that I could go to a pretrial. After four to five years of this I know the court system. That would have made such a difference to me. I wish I could have just initially gone to trial. Instead the DA told me I had no case and I saw the system as this dark, gross system. One little man got to decide my fate. In my eyes they should not have that power. The judge should have seen the case initially right off the bat.

Screw the system.<sup>120</sup> It does not work. I just happened to have counsel to help me push the case. Because of her I had the ability to push my case through. At least I feel like I got somewhere. I did group therapy for two years while my case was going on. Every day I got a call about the case. Every single girl [in her group therapy] was shocked that I brought it to the police. They were so happy that I was able to report it and because it went somewhere. Every other girl did not know what to do. One girl [in her group] who was gang raped said, "Why would I report it? They fled. I don't know who they are." I get it. No one wants to report it. My experience proves it. No, it is not going to go anywhere. For whatever reason mine went through. At least he got some jail time. I don't know why that makes me feel better, but it does. The law made me feel like I was the one who committed the crime.

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<sup>120</sup> She worked on a civil case with the law firm Taylor and Ring in West Los Angeles and offered the following in relation to the experience: "I would suggest anyone to go for them. They are willing to handle rape cases. They were great. They cared. They interviewed everyone, including the defendant. He messed with the wrong girl!"

## Emma<sup>121</sup> – Recent Acquaintance/Date Rape

I met this person online and we had been talking for a while. This was our first date going out. I usually don't let people pick me up but we shared the same religious view and we were both single. He picked me up and we had dinner. I drank half of a mojito. We went dancing after we had a full meal. I knew the security where we went because I go there with my friend a lot. I ordered a cranberry vodka diluted with ice. I remember ordering the drink. The wife of the security guard [later] said that I walked away to say hi to my friends. I came back. I didn't think he would do anything. After the one drink I do not remember anything. My friends said I drank a second drink but that after the first one I looked spaced out—that I looked so intoxicated. At that time I could handle drinks. I'd had a mojito and a full meal. One drink would never get me extremely drunk. Then some fight broke out [at the bar] and my friends went to the fight. The wife could see the guy grabbing my arm and guiding me to the exit. She said it didn't look right, but I was walking with him. We had parked at the restaurant three blocks away. I do not remember going from the bar to the car.

He was dragging me along. I was stumbling. I don't remember going to the car. I had money in my purse. He told me he didn't have any money. I only had twenty-dollar bills. The next day there was no money in my wallet. He went into my purse to get money for the valet. I just remember waking up in darkness on a side street. I saw houses on the left hand side, and one porch light. It was a really secluded street and on the right side was a park or empty lot. I couldn't see anything else. It was a blur. He was in front of me. My upper body was in the car with the seat down. He was between my legs. My body had no strength. I was hanging out the door. I saw two white lights coming. My friend later told me I left the bar at 11:30 PM. We got there at 11 PM. I didn't remember. I remember after one drink that I felt like I had to vomit. I felt hot. I didn't feel well. I don't know which one [drink] it [a drug of some sort] was in. I remember walking to the bar and starting the [second] drink but not finishing it, and that I got up to go wash my hands. I hadn't drank a lot of water and I felt dehydrated. I asked for water with the mojito [at dinner; the first drink]. I took one sip and finished my meal. I didn't want to drink it before I ate in case it would hit me hard. And that is what happened.

The next thing I remember was being in the car in the street and I saw two lights coming. When I turned to see the lights he shoved me back in the car. That is all I remember. Everything went blank. He was shoving my legs into his car. The passenger side was open, the seat pulled back, and half of my body was out of the car. I could feel his breath and everything on me. I felt groggy like I was getting out of surgery. I have fifteen seconds of recollection, of trying to pull myself up, and the next thing I know I was gone again. Driving off. I do not remember how I got home, what streets, or city. The next thing I know I'm in the front of my house. I looked at him and was trying to come to my senses. He said, "What did you do?" I kept calling my friend's name [while he was raping her]. He said "You don't

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<sup>121</sup> The event described below is the second time that Emma was sexually assaulted. The first assault occurred when she was seventeen. The perpetrator—a nonstranger—was not prosecuted.

do that when somebody else is banging you. You don't call another man's name. And you shouldn't have been crying." This was 5:15 in the morning. It turns out my mom had been calling my cell phone. I didn't know my phone was going off. I couldn't hear anything. I didn't know what was going on. He told me not to call him again. I don't remember walking from the car through the driveway to my house. My mom was at the window waiting. She told me I was mumbling and she couldn't understand what I was saying. She had to help me come up the stairs. I told her later I wasn't drunk. My clothes were dirty and muddy, I didn't have my shoes on, and I looked like a mess. She said I was crying. I don't remember any of that stuff. That morning I went to sleep and at 10 o'clock I had to urinate and I started text messaging him and asking what happened. He responded "Don't text me anymore. My wife comes back tomorrow." I asked why does my neck hurt. He said nothing happened. I asked him "Why am I hurting? Why is my vagina hurting? Did you at least use a condom?" That was my biggest thing. I wanna know if he gave me anything. He never responded. That day at noon I was debating what I should do. I decided to go to the police. I literally live four blocks from the station. I sat in the waiting room. They had me waiting until 2:30 PM in the waiting room until they figured out who was going to take my report, xxxxx where we were out or xxxxx where he lived. They kept calling the other departments but at 3 PM they finally took me to the back.

One set of police made me go through the whole story. They filled out my personal information as well but one of the officers said it was supposed to be confidential. Then they tell me due to budget issues they would have to wait until the next shift to continue because the officers who started had to leave. I had to go through the whole thing again when finally at 3:45 PM the next set of officers came in. The lady that questioned me was very compassionate and the male was very arrogant. He seemed bothered, like I was taking up his time or something. They finally did the report and said they were going to take me to get the rape kit done. They asked me where my clothes were. They put me in the car and the male cop had a little radio. He put on the radio really loud. He was jamming away and I was in the back. He kept calling the other officer, his brother, saying "So and so is looking for you. You need to meet me." He was clearly calling about personal stuff. The woman officer kept telling him she needed to get my clothes from my house [but he ignored her]. The brother and his partner were having lunch somewhere. We were heading west on the freeway but they got off [before the destination]. Wondering where we are going, the female cop kept saying "We need to go pick up her clothes," but he ignored her and parked at the Mobile gas station. Another cop pulled up. They were sitting out there talking for a good five to seven minutes, joking and laughing." The female officer again said, "We need to go pick up her clothes." We finally got back east on the freeway to my house and pulled in front. I put my clothes in a paper bag and they finally brought me for the SART exam. The male cop was cracking jokes and singing to the music. I was disgusted by everything. It was seven at night. They wouldn't let me drink water, use the restroom, or eat anything. I told them that I have to urinate. They left me all that time, to run his errand and come back here. My bladder felt like it was going to burst. They [SART nurses] had me get undressed and started doing the test and then they let me take a shower. I went to the office and told them [the advocate] what happened. They let me eat and have water. It was 8 PM at night when we [the victim and the patrol officers] got back in the car and we headed back. They dropped me off in front of the police station and said, "The detective will get back to you." They had no type of compassion



at all. The cops went to eat while I was getting the tests or whatever. I didn't need to know that they were stuffed. I hadn't eaten all day. He [the male officer] tried to joke with me and talk with me saying "What do you do, where do you work?" I thought don't try to be my friend now after the way you treated me. Then they dropped me off.

The next day the detective calls me and tells me she received the report so I went in to meet with her. She was acting a little sassy saying, "Oh, you met him online," making me feel like I did something wrong. She said she was going to contact him but that it is a he said/she said. She said she would try to get a copy of the video to see what it showed. She called me back two weeks later and said that he said it was consensual. It seemed like she believed what he said, like I was lying. She said, "I am going to get a hold of the DA and see if there is even a case." I thought, "You're telling me IF there is even a case?" I knew nothing was going to happen. I kept asking her what happened. A week later she says that she spoke to the DA and that the DA decided not to file because my blood test showed that I didn't have any drugs or alcohol in my system. Basically I told her she was full of shit because they never did a blood test. All they did was a urine test. I could tell whose side she was on. I said, "Thanks for your help and thanks for nothing." She didn't challenge the "You're full of shit" comment.

I had no further interaction with the police. I wrote a letter with my therapist and sent it to inquire about the rape kit. It had been processed a few months later. According to the detective it had been processed three weeks after and was the grounds for reject. But it was not processed. Yet the first thing that came out of her mouth was about the nonexistent blood test.

## **Leah – Stranger Rape**

It was over Christmas break while in college. School was open, but there were no classes. But you could go in and use the facilities. I came out and it was dark. It was seven in the evening. There were always people around. I didn't think about it. My car was across the street. I went to my car and was putting my stuff back in there. I was on the driver side. A guy came up and pulled a gun out and told me to get into the car and drive. I had nowhere to run. And if I had run I might have got shot, so I did what he said. He actually just wanted money for drugs, but I only had fifteen dollars. He took that. I don't think he had a plan. I didn't have very much money so he was thinking what to do next. He said to drive to my house while pointing the gun to my head. So I drive to my house. He said, "Don't go too fast. If I shoot you in the head you'll die. If I shoot you into the back you will be paralyzed for life." I thought that if I crashed the car I might not be able to get out [explaining that she complied out of fear for her safety and a will to live].

We go to my apartment and, of course, nobody is outside. So he makes me go to my house and he ties me up to a chair with all of my belts. Part of it you try to block out of your mind while at the same time trying to decide what to do next. He was not a clear plan type of criminal. We then leave and he's giving me random directions. I finally get the gist that he wanted to buy drugs. He was always in the seat behind me holding my shoulder and pointing

the gun toward me. I could never go anywhere. [He made her drive to an area known for drug sales]. He was hollering out the window at everyone. Someone brought some meth to the car and gave him some. He told me we were going back to my house. Part of you is thinking I am going to die anyway, but part of you says to do what he says and hopefully he lets you go. So we go back there [to her apartment] and he ties me up again. And then he unties me and puts me on the bed and he was so weird. He put my face into the pillow and he said, "I don't want you to see me take drugs. Drugs are bad for you." I'm pretty sure he was high. There were moments where he would say something pretty normal and then he'd say, "I'm going to fucking kill you." It was like a Dr. Jekyll and Mr. Hyde thing, or a mental disorder, and the whole time with the gun to my head. He starts taking my clothes off. I don't know. It was so scary. And after he raped me I thought now he is definitely going to kill me so I won't tell anyone. Basically, I'm in my bed against the wall and he held the gun against me. Hours have gone by. As the hours went on I don't even know if I fell asleep or not. I was mentally exhausted and confused. I was kinda asleep—like a dream, thinking this isn't happening; this isn't real. Then I'd focus again and realize this is happening and I have no idea what to do. He raped me again during the night. I don't know what time it was. It was daylight, and, I mean, I don't know, you have these phases [of feelings]: scared, then angry, and then the "I don't give a shit" phase, if I get out of here or if I die.

I had to go to work the next day in the evening. I had to convince him that if I don't make it to work they are going to look for me. I hoped he'd believe it and say to go to work. Turns out he believed me and we got in the car and he said to drop him at the metro station half a mile away. I didn't think he was going to leave but I was hoping to god he would. We get to the metro station and he leaves. I speed away as fast as I could. Then a couple of blocks away it just hits me and I start crying. Is he following me? It doesn't mentally compute. I am screaming and crying. I decided I'm gonna call one of my friends, one of my guy friends and tell him. I don't know how I said it. He said "Are you serious? No way." He was at the airport. He told me to go to his house and find one of his neighbors and stay there. He said he was going to call him and tell him to protect me and that he would be there in forty-five minutes and then he and my other friend would take me to the hospital to get whatever done. This was two hours after I dropped him off at the metro station. With like things like STDs and pregnancy time is of the essence.

We got there [to the hospital]. I checked in and they tell me we have to wait. I was in a room by myself, freaking out. Finally, like an hour or ninety-minutes later the police showed up. As if I wasn't dead enough from the emotions and the stress of the events. One was an OK cop and one was an asshole cop. Both were men. They asked me if I wanted a woman police officer. I said I don't care. A police officer is a police officer. I had never had any contact with the police. I didn't know they might treat you differently. Immediately they tell me I am lying and on drugs. Straight up! You're on drugs. My eyes were blood shot because I was so stressed and traumatized. They said, "You're lying! You're lying! Stand up. Close your eyes, and count to thirty. Can you count to thirty?" I got to thirty. They said, "You're on drugs." I said, "What?" Apparently they talked to my friends, because they were two guys. They said "You put her up to this. You told her to do this for fun. You are all on drugs. Here is how it is: stop telling me this fairytale and tell me the truth or you will personally go to prison for lying to a police officer. And I will send you to an all-women prison so women could rape

you.” I’m stunned. Why am I defending myself? The victim shouldn’t have to. The officer said that most women would rather die than be raped. But I would rather live and have a life instead of die. I’d rather live.

Because I was kidnapped [in a different area than where she lived] the case was reassigned [to a different station]. I was hoping it would not be the same thing with these cops. The first guys told me at least three or four times that I could say I was lying and this won’t go on any further. For a minute I thought that maybe I SHOULD say that I was lying so I didn’t have to deal with them. When the new officers arrived they drove me to get the SART exam. Thank god they fed me [at the clinic]. The little things make you feel so much better. I hadn’t eaten in twenty-four hours. They tested me and gave me some clothes. A friend picked me up and I stayed at his house. In the next few days I first had to meet with the detective. The time period was a blur. The detective was pretty nice; not pointing fingers, and he was trying to give more fatherly advice. He was nothing like the other officers. We had to do a police sketch. It’s insane how they can do that! You start with a mental picture and they get someone else to draw it. In a day or two they showed me six pictures. They asked me to look and see if any of these are the guy. And there he was. They let me know that he was in custody. He had shot another person earlier in the day before he kidnapped me. I thought “Oh my god! I’m lucky. I’m glad I am alive, Mr. Cop” [referencing the first officer who said women would rather die than be raped]. The detective then referred me to the DA. I think he drove me to the DA’s office. I forgot about that [remembering more about the incident as our conversation progressed]. I also met with a lady who helped me break my lease. He [the defendant] knew where I lived. I feared he might come back. That was really nice.

My cell phone was such a huge deal [with the DA]. When the guy abducted me he took my phone. There was a number that was called and they asked me if I knew it. They subpoenaed my phone records. A call was made, but I had no idea who did this. The call was twenty-eight seconds. The DA said that the defense would say that I must have made the call! My mom had called and a friend had called and no one answered. Those registered but were not picked up. I think he tried to see my voicemails to see who called. The DA said this was going to be a huge issue. I didn’t know what to say. Months passed, and I had moved. My dad came out to stay with me. Honestly I do not remember how long it was before the pretrial happened. He was in jail the whole time. I’m hoping that wasn’t a lie. I was scared out of my freaking mind to see him [at the [preliminary hearing]]. I didn’t want my dad to go [to the prelim]. It hurt my heart to have to see my dad want to kill him and be upset with himself so I brought two of my girlfriends. It was so scary. Of course they tell you it was at 8:00 AM but I waited the whole day until 3:00 PM. We were sitting out in the lobby and I saw a guy across the way who looked related to the guy so we went and got food. He looked like the guy’s brother. Finally they called me in and he was there. I’m sure he was related to the guy.

Basically, I never want to be in a courtroom for the rest of my life. Then you have to get up on the stand, trying not to look at the guy but he is staring at you. You know he isn’t going to shoot you now, but it doesn’t matter. It is a sensation of pure terror. The DA interviewed me. The [defense] attorney then interviews me and starts asking details about when it happened, like: “Is it true that you went to the Burger King and had a meal? Did you stop at 7/11 to get

a coke?” I think she was trying to get it to look like we were friends. What do you say [to that]? You do not want to yell and be a belligerent witness. I watch the court shows. Ha ha. She was asking me stuff like that. Then my DA tells me I can leave. So we leave, me and my friends. My heartbeat slowed down. As we were leaving they [the court] referred to me as Jane Doe. It made me really happy. The guy didn’t know my name and I didn’t want him to. Oh, but the DA forgot to ask me, “Is the man who did this to you in the room?” and to describe what he is wearing and what he looks like. It was bad.

I didn’t hear anything for a couple months; I’m not sure how long it was. They decided to plea bargain the case. They said, “We decided if this went to a jury that the jury will find him innocent.” Ok, so, basically he has two years in prison. Are you serious? That is all we could get out of the defense. What do we do in two years? They told me we could have a restraining order but then he has to know my name and address. What is that, a piece of paper? No, I don’t want a restraining order or for him to know where I live and my name. I’m not a judicial person. I didn’t know a lot of things. But if he has good behavior he may get out in one year. He shot somebody! I have no idea what has happened since. They told me when he gets out of prison his parole officer has to call me and tell me he is out. I never changed my number and I have never heard anything. A phone call with the DA is the last thing I heard. That was in 2007, probably towards the fall semester. You don’t ever know. I mean, god, one day, I don’t really know if, but I thought I saw him. If I see someone that looks slightly like him I just turn around and book it. I saw someone that looked similar and left; I flew down the elevator and drove away. I didn’t say a word; I just turned away and left. I have no idea if he is out or in prison. Did they let him out on good behavior?

This section introduced Kelly, Emma, and Leah, three of the seventeen sexual assault survivors with whom we spoke. Kelly was assaulted by a manager at her former place of employment, Emma was assaulted on a first date, and Leah was kidnapped and assaulted by a stranger. Each of the women reported within a few hours of the assault and described aspects of the reporting and investigative process as traumatic; specifically, their credibility and believability being questioned, being accused of lying, having to retell the story multiple times, and being told that the “he said/she said” nature of their case makes it impossible to prosecute once the suspect argues consent. Kelly’s case moved forward due to an advocate’s assistance in getting a second DA to review her case after the first stated a “he said/she said” case goes nowhere. The second DA, while noting the difficulties of “he said/she said” cases, stated that all sexual assaults are difficult to prosecute and approached Kelly as an ally in the process to move

it forward. The detective in Kelly's case, however, did not demonstrate this same level of professionalism. The detective undermined her ability to conduct a pretext phone call by making unfounded accusations to a colleague during the call that Kelly's emotionality, rather than being trauma-related, was due to realizing the man with whom she had been consensually having sex was married.

Leah had a similar situation in terms of law enforcement and prosecutors representing both allies and adversaries while trying to navigate the criminal justice system after being kidnapped and raped by a stranger. This is particularly striking given the frequency with which stranger rape is repeatedly cited by interviewees from this study as "real" rape, which is taken the most seriously and prosecuted to the fullest. While the patrol officers who responded to the hospital repeatedly accused her of lying, threatened to arrest and take her to an all-female prison where she would be raped, and told her that this will all end if she will say it did not happen, the detective assigned to investigate her case redeemed her view of the police because he was, to use her words, "fatherly" and "not pointing fingers."

Emma had no such redeeming experience with law enforcement. Her last encounter was when her detective called and described blood test results—which did not exist—that concluded there were no drugs or alcohol in her system as the basis for the district attorney declining to take on her case. The detective also claimed to have spoken<sup>122</sup> with the suspect and that he stated the sex was consensual. The following sections focus on three aspects of participants' experiences as sexual assault victims: the decision to report, cooperation with the criminal justice process, and how they feel that service provision to sexual assault victims can be improved.

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<sup>122</sup> It is unknown whether the detective merely telephoned the suspect or spoke with him in person. The suspect was never arrested.

## THEMES IN THEIR STORIES

### The Decision to Report.

I asked the male officer if I did the right thing [by reporting]. He said, “Did you scream and fight?”

--Sexual assault survivor

Even now that I know I would not be believed, it is still worth the risk [to report] to protect other people. Once you have been through some kind of trauma you wouldn't wish it on your worst enemy. If reporting it could at least get them in jail with a criminal record then it is worth it. I'm so glad that I reported because now he has to be a registered sex offender.

--Sexual assault survivor

The reporting decision and context varied by victim/suspect relationship. Three women were raped by a stranger, ten were raped by a former spouse or boyfriend, and four were raped by a recent or longtime acquaintance. Only one of the ten intimate partner rape victims specifically reported a rape to the police; the rest encountered law enforcement in relation to a stalking, criminal threats, or aggravated assault-related call and depending on how the police asked questions, the women felt either inclined or disinclined to self disclose. Two of the women's rapists were arrested for specifically sexual assault-related charges and prosecutors filed charges—and plea bargained—in both cases. We began by asking participants to characterize the reporting process from the report to prosecution:

Pathetic. There is no better word. It was a pathetic process. Not thorough. It was disappointing. It was frustrating more than anything and a waste of time.”

I would say that you absolutely need to do it [report to the police]. At least you make the odds better of your case being heard. The more people who report, the more chances there are to go to trial. But you should not walk into a police station. Go to a doctor's office if you are going to get checked out and they can treat you. It is more comfortable than just walking into a police station. Go to someone who is more supportive like a rape treatment center.

The first part was the worst because it's the most people negating what you are trying to say. I had the most people disagreeing with me and questioning me. It was a treacherous time being interviewed. I don't know how they could change it but maybe just being more open to soften the blow. It got better with time because I was not so emotional about it.

Just seeing the way I was treated and the way nothing happened. Being poked and prodded and feeling like I was dehumanized and going through that was not worth it.

Reporting was harmful to me because it instilled anger in me against the justice system, against the police. I used to work side by side with the police as a paramedic. I worked with the police. I used to volunteer with the police department. Now they are just pigs.

For me it [the decision to report] was a no-brainer. I mean, first of all, I wanted to go to the hospital. I didn't know what they'd do but I thought they might give me a blood test and I wanted to get tested for STDs. But the police have to log it before you get your testing. The hospital would not treat me until the police interviewed me. I was going to report it after the hospital. But the hospital reported it first. I had never been in a police car. So that was weird enough. It felt so weird.

At least he went to prison some. Thank goodness for the DA who helped me and I never had to go back to the police. In no way do I feel justice was served in that he shouldn't be in prison for such a short amount of time for what he did. He could do this to someone else and maybe that person won't report.

[A station] wouldn't let me report it because they said they needed more evidence than just my word. My story was based on what other people told me because I have no memory. Until I saw that my underwear was missing that's when it hit me hard. But the police would not let me report it. [The center] believed me along with my parents. My friend said it could not have happened because she was gone only fifteen minutes and my male friend never wanted anything to do with it. The police didn't want to report it as a rape but they were convinced by [the center] to file a report.

I don't have much advice to give but I would say to report regardless of what my experience was if it means there's a chance the rapist would be caught. Expect the worst because my experience was hard. I figure it's the right thing to do.

I would say to report and to know our rights and to request female officers and things like that. I don't feel like men are emotionally equipped to deal with this kind of thing. I don't see cops as being, I mean, I think they try to do the best they can, but they come off as abrasive and ask about your personal life. I think asking for a female and doing everything they ask me to do is the way to go. I think a female officer would be more compassionate and would communicate in a more sensitive manner. I go back and forth about being angry with the police.

I would tell someone to report even though my situation was not conducive to anything. The nurse said the only way to stop this from happening again was to report.

I never really believed I needed that person caught. For myself, I didn't think it would change anything for me. But it's better to report and you need to advocate for yourself and not be pushed around. A lot of this process they forget we're people. They're just trying to do their job but we have needs and rights.

I spoke at my college about the rape and told about my bad experience. I would not report [if it happened again] but if I knew who it was I would take revenge. I don't believe that [reporting] acquaintance rape does anything for the victim. I would express what happened to me but I would share my experience and that taking care of it yourself may give you results because my experience was so negative. I have lost a lot of friends over this.

### ***A Note on Intimate Partner Rape Survivors and the Decision Not to Report.***

I could hardly talk for days after forced oral sex, but I could not admit that he was being domestically abusive. Verbal abuse was what hurt me more because at least I was praised for sex. The verbal was worse because of the horrible things he said.

--Intimate partner rape survivor

The preceding section's statements represent the reporting perspectives of participants who were assaulted by acquaintances (n = 4) and strangers (n = 3). Participants who were sexually assaulted by intimate partners (n = 10) were all in what would be commonly understood as a domestic violence relationship, and did not report being raped to the police; in fact, the one exception to this trend was reported to law enforcement by the woman's doctor. When asked about the decision to report (or not), responses ranged from not knowing that it was a crime to feeling that it would be a waste of time. Some women attributed a reluctance to report to embarrassment, fear of being judged, and a lack of knowledge. Another stated, "I did not know that you have the right to say anything." Another stated that her decision to not report being raped by her husband was impacted by the fact that she had been sexually abused her whole life:

Nobody ever listened to me at juvenile hall when I told them that this sexual assault happened in my home. Nobody paid attention then so why would they pay attention now?

Others talked about the myriad ways that their relationship to the suspect impacted not just law enforcement's but their own responses to the abuse and violence:



When you have children you don't want to tear the family apart. There is a weight on the mother to keep the family together so you must be subjected to the way he chooses to treat you. Keeping this from the kids you need so much strength to deal with the emotional, sexual, and mental abuse. I never reported to the authorities. Never reported.

I was in a two-year relationship but didn't report because every time I had the chance to talk to someone and the police came to the house I just froze. And law enforcement never removed him until the last arrest. At the time I never called the police and I acted like nothing happened. He would [usually] call the police because I was screaming or crying after he would sexually assault me. He would call the police and pretend he was taking care of me and the police would come and believe his story. Looking back I don't know why I never reported. The final arrest I called his father who was a cab driver and I told him there was something wrong with his son. I asked his father to come and get him because he would always manipulate the police. He always called me a cunt, a whore, demanding food, care, and attention and I went into an automatic mode and function. A girlfriend who was a colleague often saw me looking like a stone. I asked my girlfriend to drive one time because I was wearing a hood and she saw that I was bruised.

I had one friend who did everything but these guys are never prosecuted. Nothing happens even though you've done everything you can. The guy would break in so she took those steps but there were no consequences for violating restraining orders. When I did go to the police station nobody asked questions about what happened. They never asked anything and never once did they say ma'am let us help you. They'd say there's nothing we can do. [The suspect] neglected to pick up the child and the police were no help. I asked for help because of his child endangerment but the cops would never help.

I recommend reporting even though the police say there's nothing that can be done. It is frustrating but it puts it on his record and creates a history so it helps this way. Leaving a record of disclosure can make a big difference.

The police are no help. Social services are more helpful.

The police just want to know how he hit you.

Are you scared? If not the police don't tend to come.

Police reports are a waste of time. He could do nothing that would get him in trouble.

No matter how violent he is the court wanted you to work it out. They would encourage even with women who were scared. Even petrified women were encouraged to work it out so why trust the criminal court system?

I knew he was raping me. Part of me knew it was happening and part of me didn't want to know. Only one person kinda knew and it was hard to talk about and admit. I can hardly talk about it in group [in the present day].

After four years I still haven't told my parents [about the abuse], especially about the rape. Nobody knew I was being raped. I isolated myself from my family for ten years. It was how I protected myself from my family and protected my children.

I told his mother because everyone else would say why are you staying. Nobody understood the fear, the anxiety, and being trapped. He'd spent all my money. I was trapped physically. My mother said she was scared of what he would do because he's sick.

I told his mother we were fighting over sex and she said this was my responsibility. It was the feedback, though I never believed it.

I never told anyone until I got to the rape center.

A female officer looked at me like I had seventeen heads. Another police person just stared and was cold when I asked for help. I was visibly bruised but there was no understanding. The male officer was more help than the female. My friend spoke up and said why couldn't you have done what the male officer said. [Officers at one station] had me sitting in the public area until I stopped screaming on the floor. Then they moved me to another room.

Not even enough probing [by the police]; they just asked a few questions. Some police person was mean. He was abrupt so I refused to talk. The other guy came over and sat with me for hours and let me cry. The other police officer was mean.

The following woman's experience is notable for her outspoken appreciation of and respect for the treatment she received from the police:

I dated him for five years. I never thought of anything he did as sexual assault. I didn't realize that I was sexually assaulted until the police came to my house and asked questions. If you say, "Did he rape you?" you're not going to necessarily get the full response. The officer, who was male, asked me "Did he force you to have sex?" And I said yes, all of the time. But I never thought of that as sexual assault. I never used the word rape because I was in a relationship so therefore I never considered it rape—although it would be painful—until the big, strong gentleman [the police officer] reminded me that it was rape. He had a way of asking questions which helped me.

Considered together, the sexual assault victims interviewed for this study—regardless of their relationship to the suspect—described primarily negative experiences during the reporting process but they remained cooperative despite law enforcement's lack of cooperation with them. Beyond the decision to report, participants had varying degrees of interaction with law

enforcement and the court system. Some never<sup>123</sup> reported and shared why (n = 9), others reported and dealt solely with patrol and a detective (n = 4), while others experienced multiple interviews with patrol officers and detectives and district attorneys (n = 4). Notwithstanding the difficulties associated with coming forward after being sexually assaulted, they still encourage all victims to report to the police in hopes that the suspect will establish a record, which will lead to a formal sanction such as an arrest and prosecution. There was consensus that a sexual assault victim would likely be forthcoming and cooperative if the criminal justice representative tasked with their case is professional, empathic, and does not communicate by word or action that they are wasting their time.

The next section begins by providing some insight into victims' decision-making with regards to cooperating with law enforcement by way of Lisa's and Mary's stories; Lisa was raped by a longtime acquaintance from grammar school, and Mary was raped by her ex-husband, both during and after their marriage. Both cases went to the district attorney's office where charges were declined but only Mary's rapist was arrested.<sup>124</sup>

### **Lisa – Acquaintance rape**

I was raped two years ago at a New Year's Eve party so I knew everyone there, including my rapist. I was pretty drunk and this guy who I'd known since I was five asked me to follow him to another room where he pushed me on the bed and I passed out. There were injuries to my arms and face and I was incredibly sore. I'd never passed out before. I reported the following day. I never remembered being raped, but I remember trying to fight him off and my next memory is of my friends holding my hair and I'm vomiting. I woke up the next morning thinking I had not been raped but there was a pain in my vagina and then I realized what happened. I spent the whole day deciding whether to report or not. I decided to tell my father who wouldn't be able to stand it if there was no justice so he called the police who

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<sup>123</sup> It is important to underline that while the intimate partner rape survivors did not necessarily report the sexual assault to the police, they all stated they had numerous contacts with law enforcement during the course of their abusive relationship.

<sup>124</sup> The pre-arrest charge evaluation process at the district attorney's office in sexual assault cases is discussed in Sections V-VII, IX, and XI.

came to my house. I was harshly interrogated by a male officer. The female officer present never said anything. Their main focus was I was drunk and how drunk was I but they never considered if I was too drunk to consent. I gave a statement to [law enforcement] but they were very fixated on how much I had drunk and were moving towards blaming me because the rapist was someone I knew. The plan was to have me call him and to tape his call. It was a stressful exercise. The rapist spoke with a lawyer and he came in voluntarily. At that point they believed him because I was drinking a lot and they made the assumption this was consensual. One of the things that still bothers me is that during the initial interrogation I was asked if I'd blacked out before and I said no. Later they asked if I'd ever gotten physically ill from drinking and I told them yes a dozen or so times when I was in college. The rapist was never arrested but charges were rejected because in the report it said that I'd been known to black out but this was inaccurate and not what I'd told them. I asked them to bring out the tape from initial interrogation when I was told there was no tape and it wasn't recorded. My friends were at the party and could pinpoint people who were present at the party. I gave their contact information to the police. A friend found me passed out on the bed and the rapist ran out of the room. The facts [as written by the detective in the report] were mingled and skewed. I was misquoted three times and I never had a chance to examine my report. In my second visit with the police I had broadened the facts because my memory came back. As time went on I remembered the evening of the rape more clearly but the officer referred to my initial statement where I was in shock and felt that I was making things up in the second statement. I would like the police to have gone through my case with me before giving it to the DA to give me a chance to see if I had problems with it. The evidence from my case was going to be presented to another DA but I was frustrated and decided to just not think about it anymore so I gave up on prosecuting. The DA's office was looking for a slam dunk and my case wasn't a slam dunk. I kept asking if the rape kit had been processed. I was told that was no point in processing the rape kit once the rapist admitted sex had occurred.

### **Mary – Intimate Partner Rape**

I was married at fifteen and my husband was thirty-two. He raped me and it was very rough. I had no information about sex. I was from [another country]. I was told I was out of control. I was married for ten years but never felt right with him. I was raped for seven years every night. I talked to his family but was told that this was my job; his family said there was something wrong with me. I was disgusted. I could not look at my father. I felt dirty, nasty, and like a very horrible person. After ten years of being with him there was a lot of sexual assault going on. I felt that marriage was a nasty thing and after I got divorced I still got raped and never reported it to the police. During this whole time and he would threaten that he would take my boys. And I was not allowed to have friends and I had no family here. I didn't know what rape was. I was scared of him because he threatened to kill me. He kept reminding me that if he would kill me nobody would notice that I was gone. When I finally called the police the officers came to my house and they talked to him. They basically told him to calm down and he told them that I was on my period and I went crazy. The police never came to help me. I divorced him and he still came to my apartment and raped me as if

nothing ever happened. He raped me in front of our children. They were in the next room. After he raped me he would say now you're my wife again. I was accused of asking for the rape because I wasn't wearing long clothes. My doctor finally called the police. The police asked me to call him and let him talk about raping me [a pretext phone call]. I didn't want to send him to jail because of my sons. I was afraid he would take this out on the boys. The DA would not file the rape case because s/he said my ex-husband had a cultural defense. He was arrested but they let him go within three hours. The DA said the rapist has to believe he's raping in order for the DA to prosecute. When the DA decided not to prosecute it was a great disappointment. Everyone thought I'd made up the whole situation even though they had the evidence and I was cooperative. I sat with the DA and told them everything but the police and judges say they cannot do anything. The DA encouraged me to move on. My boys are six and five. They do not want to see their father. He is abusing his new wife and doing this in front of the children, which upsets them.

The final section turns to participants' recommendations for improving the criminal justice system's response to sexual assault and its victims. Their suggestions center primarily on better treatment of victims by the police and prosecutors, being clearly made aware of their rights from the beginning, and better interviewing and report writing skills.

### **How to Improve the Criminal Justice Response to Sexual Assault.**

The more the police pressure you the more there would be a benefit of a therapist to slow the process down. Victims do not need to feel the pressure. The police would yield much more if they would slow down the pressure.

The police could be condescending. I saw the rapist's face twice but when they asked me about the sketch they kept asking me more questions which I couldn't answer. I needed them to stop pressing me but they kept asking questions about the incident.

The police don't let us get the information out there. They just question and after a while I'm thinking what they might be thinking and I felt they were trying to turn the situation around. I think if they approached in a more compassionate way, like being a good listener, it would be better. In my situation the most compassionate person I dealt with was a nurse so there was something in her training that was conducive to getting more information.

No breaks during statements; all of this waiting around and then no breaks during the statements. They always gave the impression they wanted to get this over quickly so I never felt I could think events through so I felt like my story was continually being attacked and that they were always poking holes.

A big point is treating the victim like they are a victim, regardless of the crime. With rape it is like, "Oh, it is rape, whatever." They make it wishy-washy when it is rape. Let them [victims] know that you are here to help. Then make the victim feel like their story is important and that that you are willing to hear their side. They need to really listen to their side. Tell the victim their rights. We have rights. We are adults and we need to be treated as such. Let us know we have rights, regardless of the crime. They tell suspects their rights, but they do not tell me mine as a victim. There should be a list. I had no idea of my rights. Tell us, in a nice way. They need to be supportive. That is their job! The experience has totally changed how I approach life. Counseling has been a blessing. I could not do laundry at night because I was scared. I didn't feel safe. Even if people are against counseling they should be told that it is available. There should be information about rape treatment centers at Planned Parenthood or at ob-gyn offices. Even a brochure would be great. At the least get counseling. The police need to be knowledgeable about rape treatment centers and places like that. That would be very helpful as well. And I know now how to go through it. I know more now. I would say can I see another DA please [if a DA was rude or unhelpful]? Now I know that is an option.

I was not told about the right to have an advocate. I requested my mother be there and was told I could not by law enforcement.

In terms of the patrol officers at the scene, I felt like they were fine. I didn't talk very much. The female officer was very nice and came into the room with me during the exam. But the police report was a little shaky. It might have been a hindering to my case. I was a little hysterical. They wrote, "The victim might have had a drink." Don't write down stuff unless you know what happened! They just wrote whatever. They should have waited to take the report once I calmed down.

Report it at the hospital first, not at the police department. Make sure that they do blood tests. I learned that the hard way.

First and foremost I would make sure that any victim that comes in would be treated by all police officers as if it was someone from their family; not just a person with no feelings. Learn to be compassionate. Second, ask them a brief account of the incident. Don't sit there and bullshit their way through everything. Whatever the agency, just take the damn report! Time is of the essence. Take the person straight to the rape center. Once the therapist interviews take your notes then. Don't make the person go over the same story over and over again.

First the police station, then the SART exam; write it all down ONCE [emphasis in her wording] so each party can get it when told the first time. All of the retelling was a waste of time. I felt like a billboard. When transporting the victim to wherever put them in a car with tinted windows at least. People try to see in there. It makes you feel like a suspect, like you did something wrong. Give them a little bit of dignity and privacy. [The police] were walking me into the entrance [to get the SART]. Everyone is watching you and it labels you a victim. That stays with you. Every time I see a cop car in front I know what that means. Some people deal with it better. I am a stronger person, but not everyone is like that. Everyone looks at

you like, 'Oh', especially the men. If they look at me I say yes, I was raped, I was choked, but look at me now. I didn't crawl into a ball and hide in the corner.

Reprimand the officers who don't take their job seriously. That would be the biggest thing.

The officer in the front [of the station] told me to tell him what happened, right there at the front counter. He asked where I lived and where he [the suspect] lived. He said hold on I need to find out where you need to report it. He called all around to see who wanted to take it. It started a little past 2 PM. I was there at 12 PM. It took two hours to figure who was going to take the report. I was in the front for two hours. I live in the neighborhood. Anyone could come in and know me. I told them I didn't want to sit out there but they told me they had to figure out where I had to go.

The only thing I would say is don't just throw it under the rug and actually make changes. Actions are louder than words. They can hear what victims have been through, but taking it in and not doing anything about it will make it not worth it. That is the key thing. I am confident that by going through this that eventually something will be done.

I had to tell my story four times. It felt like I was talking to a wall the first time, second time, and the third time.

I guess I would first come up with an understanding about how they are trained. I would have a meeting and tell them my story so they can understand where I am coming from. They should come up with some kind of set questions that they ask people, without open-ended ones. Something other than 'Did you invite this guy over to have sex with you?' That is not a question to ask a victim. I would devise a method about the way to ask questions. They are not going to get the truth out that way because it puts you on the defense.

I don't know that it is just one thing [that needs improvement]. The DA gave me the vibe that he was new. He was not a young man but he could have been new to his job. I'm not sure. I guess I don't know because I don't know the system but why would the defense and the DA talk and meet? Why did they meet? That was never explained to me. They are supposed to be on different sides. I really have no idea. I got the call saying we did a plea bargain and it is going to be two years. They didn't give me many specifics. I trusted his judgment because I am not an attorney. I don't know what to say about the DA, but I'll say that the detective was very thorough. That was a good thing. He never used a rude or loud tone with me. He did more of the 'Tell me what happened' approach and asked me to explain the situation. It was a 180 from the patrol officers. They talked more than I did.

I would tell them [a victim who was contemplating reporting] my story so they know what they are in for. It is so shocking when you come to the people who are supposed to help you. Even though mine did not end like I wanted to maybe their guy will get behind bars at least somewhat. They [rapists] don't respect women. They could do this again. You owe that responsibility to other women to say something.

Ask for one man and one woman [police officer] to at least have one women to talk to. Men feel they are more powerful than you. They talk down to you. Not everyone did, but maybe they wouldn't have gone about it that way if a woman was there. Women make it a more inviting environment. Watch your mouth because there are women in the room may help. I do not know to what degree, but it might.

It will get better as long as you decide not to live your life miserable and in fear. When it gets dug up I'm okay. The reason I did this [interview] is because I want to help people. How selfish would it be of me if I didn't help.

The detectives have no idea how their questions affect you. It is scary, when someone gives you advice. You listen to them like a doctor. I didn't know what to do. We want to cooperate. Well, you're the detective, what do you say?

Having more female officers involved. They need training to know how to talk to victims. Maybe they have this already but they need more training and more female officers. Somehow incorporating therapists working with the LAPD and LASD. It can't just be the victim and the cops. Train therapists to know the information the police need. They need a level of compassion and communication skills. They need a therapist to communicate with victims along with the police.

I definitely think they need more female officers and every crime scene should have a female officer. Not to be left alone with a male officer. Better communication. The police had no clue how to talk to me, especially as the rape lasted five hours. I felt interrogated. They could have been more sensitive to the trauma. It's all about the approach by the police.

***A few comments specific to the intersection of sexual assault and domestic violence.***

There is no complete healing from this. Girls and boys need to be educated. Services are never provided to get more protective visitation. The children know their father is doing wrong things but the system has no functionality to pursue safety for women from these violent men.

In some cases it's more dangerous to tell than not to tell. It jeopardizes our kids and ourselves because these men are all violent.

By meeting someone normal made me realize how unhealthy the previous relationship was.

So much of the abuse becomes normalized. You hear it so much that it becomes normal.

You talk yourself into liking it so that you don't hate yourself so much. You learn to not feel dirty.

Groups are important to be with other women who have been in their shoes.



Law enforcement need more specialized units that are staffed twenty-four hours, and the courts need to be more serious about these cases.

## **CONCLUSION: SEXUAL ASSAULT SURVIVORS' VOICES**

This section reviews the findings from interviews with seventeen adult female sexual assault victims who were assaulted by a combination of strangers (n = 3), acquaintances (n = 4), and intimate partners (n = 10). All seven of the women who were raped by acquaintances and strangers reported the crime to the police; two of the seven suspects were arrested. Prosecutors filed charges and plea bargained in both cases; however, only one of the defendants had to register as a sex offender. Of the ten intimate partner rape victims interviewed during this study only one reported being sexually assaulted to the police; rather, her case became known to the police after her doctor reported it, providing built-in corroborative evidence. The police immediately arrested her ex-husband/the suspect but a deputy district attorney declined to file charges because, according to the prosecutor, the suspect could use a cultural defense; that is, he had to realize he was sexually assaulting the woman in order to prosecute him. The prosecutor went on to say that the best thing the victim could do is to “move on.” The suspect has since remarried and the victim’s two sons—who do not like having contact with their father—state that he is currently physically abusing their stepmother.

Considered together, participants’ descriptions of their interactions with the criminal justice system suggest that, with few exceptions, they encountered detectives with a “Guilty until proven innocent” approach to sex crimes victims. Similarly, the sole victim out of seventeen whose suspect was in custody when the case was presented to the DA’s office encountered a prosecutor who was “Looking for reasons to reject.” Participants reported being cooperative with the criminal justice process despite the fact that cooperation was not necessarily reciprocated by

law enforcement and/or prosecutors, and all but one stated that they would advise future victims to report to the police so that suspects will be sanctioned and accrue a criminal history. It is also important to emphasize that deference to the knowledge of the detective and prosecutor was a consistent theme in these women's stories; in other words, they responded to the tones set by the criminal justice officials tasked with their case.

In closing, we are very grateful to the women whose experiences comprise this section, and have much respect for the courage and strength it took to share their stories. Given the primary motivation for their cooperation with the interview process was to foster improvement to the criminal justice response to sexual assault, the next and final section of this report discusses this study's conclusions and policy implications.

## SECTION XI CONCLUSIONS AND POLICY IMPLICATIONS

When it comes to rape people say to be wary of strange men. But it's not the stranger who comes inside the house. It's known suspects and victims who met at a club or bar, or friends, or maybe they dated. Usually they are drunk or inebriated or unconscious. The jury may say 'You may have said no, but your actions said yes.' The law is clear that even one word of no means no, but jurors want signs of actual force because they want signs but it's the victim saying no that makes it rape.

--VIP Deputy District Attorney

[The problem lies with] Divisions getting nonstranger cases where [the suspect's] ID is known and the detective takes the case to the DA and gets a reject. No one tested the rape kit and the suspect argues consent. There is a big push to push all of these cases through and then they reappear at RHD as a cold case. And nothing happens to spousal rapes ever.

--LAPD detective

This study employed a mixed methods approach to examine sexual assault case processing decisions and outcomes for cases that were reported from 2005 to 2009 and were investigated and prosecuted by the Los Angeles Police Department, the Los Angeles County Sheriff's Department, and the Los Angeles County District Attorney's office. We analyzed trends from 2005-2009 in the three case closures utilized by law enforcement per the Federal Bureau of Investigation's Uniform Crime Reporting program: cleared by arrest; cleared exceptionally; and unfounded (relative to cases that remained open). We also analyzed a combined total of 944 case files from 2008 to gain in-depth understanding of the victim, suspect, and case characteristics specific to the sexual assaults that were known to law enforcement in one of the most populated and diverse counties in the United States. The District Attorney's office provided outcome data on cases referred to them from the LAPD and LASD during 2005-2009.

To provide a more comprehensive assessment of the investigative and prosecutorial context, we interviewed 106 detectives and prosecutors to examine how they work together to

prosecute sexual assault; specifically, their decision-making strategies upon receiving a sexual assault report, ranging from how they assess victim credibility and build rapport with victims, to when detectives close a case and what inclines a prosecutor to file/decline charges. Finally, we spoke with 17 women who were sexually assaulted by a combination of strangers, acquaintances, and intimates about their experiences with the criminal justice system and how the system can improve service provision to future victims.

## **SUMMARY OF KEY FINDINGS AND CONCLUSIONS**

### **Case Attrition**

Consistent with prior research, the primary conclusion of this study is there is *substantial attrition in sexual assault cases reported to the LAPD and the LASD*. Stated another way, very few sexual assault reports lead to the arrest and conviction of a suspect. Based on the data for 2005 through 2009 and considering only the cases that met the UCR definition of “forcible rape” and that involved victims over the age of 12, there were 5,031 sexual assaults reported to the LAPD and 2,269 sexual assaults reported to the LASD. The percentage of cases that were cleared by the arrest of an adult suspect was 11.7 percent for the LAPD and 27.1 percent for the LASD.<sup>125</sup> Only 9.7 percent of the 5,031 cases reported to the LAPD and 17.8 percent of the 2,269 cases reported to the LASD resulted in the filing of charges against the suspect, and only 7.8 percent of the LAPD cases and only 14 percent of the LASD cases resulted in a conviction. Among cases reported to the LAPD, in other words, only one in nine was cleared by arrest, fewer

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<sup>125</sup> As we note elsewhere in the report and in this conclusion, the arrest rate for each agency—and particularly for the LAPD—would be higher if cases that resulted in an arrest but were (inappropriately) cleared by exceptional means after the District Attorney refused to file charges were included. Although we could not identify these cases in the 2005-2009 data, our analysis of the 2008 data revealed that the percentage of cases in which a suspect was arrested (regardless of whether the case was ultimately cleared by arrest or cleared by exceptional means) was 32.9% for the LAPD and 46.7% for the LASD.

than one in ten resulted in the filing of charges, and only one in thirteen resulted in a conviction. For the LASD, about one in four reports was cleared by arrest, one in six resulted in the filing of charges, and one in seven resulted in a conviction.

As these data illustrate, the locus of case attrition is the decision to arrest or not; the majority of reports of sexual assault do not result in the arrest of a suspect. However, it is important to point out that the decision to arrest the suspect or not, although formally within the control of law enforcement, reflects decisions made by both detectives and district attorneys. Detectives for both law enforcement agencies will either arrest the suspect and present the case to the district attorney for a filing decision or present the case to the district attorney for a filing decision before making an arrest. In the latter situation, if the district attorney reviewing the case determines that the evidence does not meet the standard of proof beyond a reasonable doubt, the detective investigating the case will not make an arrest but will clear the case by exceptional means (which is an inappropriate use of this type of case clearance). As we discuss in more detail below, presenting the case to the district attorney prior to arrest subjects sexual assault cases to a higher standard of proof than is required by law *to make an arrest*.

An important consequence of pre-arrest charge evaluations is the failure to arrest in “problematic” cases (e.g., he said/she said cases or cases involving victims who were engaged in risk-taking behavior such as drinking or using illegal drugs) in which the identity of the suspect is known, there is probable cause to make an arrest, but the detective investigating the case believes that it would be difficult, although not impossible, to prove the suspect’s guilt at trial. Some of these are cases in which the victim is unwilling to cooperate in the investigation and prosecution of the suspect. However, interviews with detectives for the two law enforcement agencies revealed that often the cases that are presented to the district attorney before an arrest is

made are cases that have not been thoroughly investigated by law enforcement that are presented to the district attorney in anticipation of a “reject.”

The conclusion that the pre-arrest charge evaluation process is being used by law enforcement to dispose of problematic cases is supported by the findings of the quantitative analysis of the prosecutor’s decision to file charges or not. In cases presented for filing consideration prior to an arrest, charge rejection was significantly more likely if the victim engaged in risky behavior; charge rejection was significantly less likely if the victim physically and verbally resisted the suspect, if the victim made a prompt report, if the suspect used some type of weapon during the commission of the crime, if the victim was willing to cooperate with law enforcement as the case moved forward, and if there was evidence or witnesses that could corroborate the victim’s allegations. The results for the analysis of the decision to reject charges following arrest were very different. In fact, only three variables—whether the victim had a motive to lie, whether the suspect used a weapon during the commission of the crime, and whether the victim was willing to cooperate—had a statistically significant effect on the post-arrest charging decision. This suggests that cases in which the victim engaged in risky behavior at the time of the incident are likely to be screened out *before* law enforcement makes an arrest, as are cases in which the victim did not verbally or physically resist the suspect or failed to make a prompt report, cases in which there is a lack of physical evidence to corroborate the victim’s story, and cases without any witnesses who can attest to the victim’s allegations.

The conclusion also is supported by the qualitative data obtained from interviews with detectives for the two law enforcement agencies and with deputy district attorneys (DDAs). We asked respondents to comment on the pre-arrest charge evaluation. A number of DDAs confirmed that the charge evaluation process influences (indeed, determines) whether the suspect

will be arrested. One stated, “So, if they know we won’t file then they don’t arrest.” Another similarly said, “If we reject at the pre-filing interview, they usually won’t make an arrest because we won’t be filing the case.” Detectives from both law enforcement agencies agreed with this, noting that the typical case taken to the DA for a pre-arrest filing decision was a case involving non-strangers. Although a minority stated that they make probable cause arrests based on a thorough investigation regardless of the relationship between the victim and suspect, the majority said that non-stranger sexual assaults are resolved by “taking them to the DA’s office to let them decide.” As one LAPD detective put it, “Sometimes if we’re unsure we have what we call drop offs, in which we present paperwork to their office and they’ll tell us what to do.” Another said, “If I’ve investigated a case and I think all things being equal the suspect should not have an arrest jacket put on him and I know that case will be rejected anyway, *I am going to take it to the DA’s office and get it rejected.*”

A common two-part theme found in the responses from detectives was, first, a belief that DDAs will not file charges unless the case is a “slam dunk case,” and, second, a perception that this reflects in part their fear of losing a case at trial. Two detectives,<sup>126</sup> in fact, one from the LAPD and one from the LASD specifically used the term “slam dunk case,” stating that

Often we have enough evidence to go to a preliminary hearing but they may not want to take a case; they want more, *a slam dunk case*. I often wonder why. Rumor is they get *rated based on convictions so they hesitate unless it’s a sure win* . . . The problem is there are career serial rapists who go unnoticed because the DA isn’t filing. [LAPD detective]

I think the reason [for the high rejection rate] is that the filing DA doesn’t like putting a trial burden on other DAs. Some of it is the national political implication in terms of conviction rates. They pick only *slam dunk cases* and sexual assault cases are always a lot of work . . . All of this [evidentiary problems with the case] can lead the DA to say screw

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<sup>126</sup> The use of the term “slam dunk” was not confined to law enforcement. One DDA also used the term, noting that “There is a wide range of DDA interpretation as to what sufficient evidence means and when a conviction may result. I will say this because it is anonymous that there are people attracted to sex crimes because you can get high sentences, and *they reject ones that are not a slam-dunk.*”

it; this is too difficult. But you can't say it's too much work when this person's life is on the line and their quality of life. There have got to be cases where you file because you know he did it. [LASD detective]

Another LAPD detective echoed these comments,

In today's day and age it is very difficult [to get the DA's office to file charges], which you would think would be the opposite. And I will say this: [a certain DA's office] has changed considerably. We have specialized DAs who do this and to me it feels like they *do everything they can to not file a case. . . . Some are afraid of trial, some fear losing.* Before at [a Division] we'd say even if it was he said/she said but we believe her we would take a chance knowing it was 50/50, but nowadays they aren't willing to take that chance.

Considered together, the quantitative and qualitative data suggest that the consequence of pre-arrest charge evaluations is the failure to arrest in cases that are not "slam dunks," many of which involve non-strangers and victims who engaged in risk-taking behavior at the time of the incident and delayed reporting the crime to law enforcement.

### **The Decision to Unfound the Report**

A second conclusion of this study is that unounding sexual assault reports occurs infrequently<sup>127</sup> and that most of the reports that were unfounded by the LAPD were false or baseless reports. About three-fourths of the unfounded cases involved false or baseless allegations; the remaining cases were either clearly not false reports or were ambiguous cases that the research team concluded should have been investigated further before being cleared. Most of the false reports involved allegations of aggravated rape and in about half of the cases the victim underwent a forensic medical exam and eventually recanted the allegations.

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<sup>127</sup> It is important to point out that our conclusions regarding unounding are based on data provided by the LAPD. There were too few cases unfounded by the LASD to include in the analysis. It also is important to note that each law enforcement agency uses a "non-crime report" to document allegations that may or may not be re-categorized as a crime report. Allegations that are handled via a non-crime report and that are subsequently determined to be false do not need to be unfounded. Therefore, the data provided to us by the LAPD and the LASD almost certainly understate the number of reports that were unfounded.



Complainants' motivations for filing false reports, which fell into five overlapping categories, included a desire to avoid trouble or a need for an alibi for consensual sex with someone other than a current partner, a desire to retaliate against a current or former partner, a need for attention or sympathy, and guilt or remorse as a result of consensual sexual activity. Many complainants also had mental health issues that made it difficult for them to separate fact from fantasy.

These results suggest that the LAPD is appropriately clearing cases as unfounded most, but not all, of the time. Generally, the investigating officers are following UCR guidelines and are unfounding cases only after an investigation leads them to conclude that the allegations are false or baseless; they typically do not use the unfounding decision to clear—or dispose of—problematic cases. Nonetheless, there were 10 cases with compelling evidence that a crime did occur—physical evidence from the forensic medical exam or witness statements that corroborated the complainant's allegations, injuries to the complainant that were consistent with her account of the assault, or evidence recovered from the scene of the crime. In most of these cases, a number of which involved complainants and suspects who were intimate partners or acquaintances, the complainant recanted but it was clear that her recantation was motivated by fear of the suspect, pressure from the suspect or his family and friends, or a lack of interest in pursuing the case. It appears that the victim's recantation and/or lack of interest in prosecuting the suspect led the investigating officer to conclude that the allegations, while not false, were not provable and that the case therefore should be unfounded.

Coupled with the fact that there were an additional eight cases that the researchers believed should have been investigated further, findings suggest a need for additional training on the decision rules for unfounding sexual assaults. Patrol officers and sex detectives need specialized training to understand the complexities of sex crimes and the interview skills that are

critical to build rapport with victims and maximize the likelihood of the most forthright self-disclosure. Further evidence of this need for training comes from our interviews with LAPD detectives. Although some detectives stated that victim recantation was neither a necessary nor a sufficient condition for unfounding, many said that they believed that a report could be unfounded *only* if the complainant recanted her testimony and a few stated that they would *always* unfound the report if the victim recanted her testimony. Finally, some stated that rather than unfound a case they prefer to take it to the DA regardless of what the victim's statements and the evidence indicate (e.g. LAPD pgs. 201-202; LASD, p. 278).

### **The (Mis) Use of the Exceptional Clearance**

A key finding of this study is that each law enforcement agency's case clearance data are compromised by the misuse of the exceptional clearance. Analysis of the 2005-2009 case outcome data provided by each agency revealed that over a third of all cases reported to the LAPD and over half of all cases reported to the LASD were cleared by exceptional means. This calls into question the assumption that cases cleared exceptionally would be just that—an exception to the expectation that solved cases would be cases cleared by arrest. It also raises questions about the reliability and validity of FBI data on cases cleared by arrest. Because cases cleared by arrest are combined with cases cleared by exceptional means for UCR reporting purposes into a single "cleared by arrest" category, the percentage of cases "cleared by arrest" for this time period would have been 45.7 percent for the LAPD and 88.3 percent for the LASD. Clearly, these figures, which largely reflect cases cleared by exceptional means, paint a misleading picture of the degree to which sexual assault cases are "solved" by these two law enforcement agencies. It is misleading to count sexual assault cases as solved when a suspect

was never arrested and the district attorney declined to file criminal charges due to a lack of evidence.

The high rates of exceptional clearances for the LAPD and the LASD result from the misuse of this case clearance type in three interrelated situations. The first is that cases that result in the arrest of a suspect (and that are initially categorized as cleared by arrest) are cleared by exceptional means when the district attorney declines to file charges. This is based on an LAPD policy to clear by arrest only when the prosecutor files felony charges and reflects a need for training for the LASD, whose policy is consistent with UCR prescriptions to clear by arrest if a suspect is arrested. Although we could not determine the percentage of 2005-2009 cases in which this occurred (the data file we were provided included only the final case clearance type), we were able to determine this for the 2008 cases. Forty (14.6%) of the 273 rapes and attempted rapes in the LAPD sample and 53 (12.9%) of the cases in the LASD sample were cases in which a suspect was arrested but the case was cleared by exceptional means when the district attorney refused to file charges. Because the UCR Handbook clearly states that the exceptional clearance is to be used only in cases in which law enforcement is *unable to make an arrest* due to factors beyond their control, these cases are incorrectly cleared by exceptional means. The implication of this is that each agency's arrest rate is lower than it should be. In fact, adding these inappropriately cleared cases to the agency's arrest rate more than doubled the rate for the LAPD (from 12.1% to 26.7%) and increased the LASD rate by about a third (from 31.7% to 43.6%). Basing the validity of an arrest (measured by clearing a case by arrest) on whether a prosecutor files charges translates into a higher standard than what is required by the FBI, it is counter to the reasoning for the development of the exceptional clearance category for cases in which police are

*unable* to make an arrest, and, it artificially decreases the agency's arrest rate.<sup>128</sup> Thus, assuming thorough and professional police work, an arrest does not need to be signed off on by a prosecutor to render it valid for FBI crime reporting purposes.

The exceptional clearance is being used incorrectly in two additional situations. The first is when the suspect is not identified and/or his location is not known; this is more problematic for the LASD (28.4% of its exceptionally cleared cases did not meet these two criteria) than for the LAPD (only 3.2% of its exceptional cleared cases failed to meet these criteria). Because an identified suspect and knowledge of the suspect's location are *required* in order to clear a case by exceptional means, these cases should not have been cleared but should have remained open until a suspect was identified.

The second situation in which cases may be cleared incorrectly by exceptional means is where probable cause to arrest the suspect exists but the detective chooses instead to present the case to the district attorney's office for a pre-arrest charge evaluation and the charges are rejected based on insufficient evidence. This situation is problematic in that it does not involve something beyond the control of the law enforcement that prevents the arrest of the suspect. There is probable cause to make an arrest but the case is cleared exceptionally because a prosecutor determined that the evidence is insufficient to prove the case beyond a reasonable doubt to a jury. In this situation, the case should not be exceptionally cleared as it is *within the control of the police* to arrest and charge the suspect and turn him/her over to the court for prosecution.

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<sup>128</sup> Most officials within both departments—again due to FBI guidelines—spoke of clearance rates based on current UCR summary reporting practices which are calculated by *combining* the total number of cases cleared by arrest and cases cleared exceptionally. In other words, the concept of considering them separately seemed unnecessary given that is how they are reported nationally. It is important to note that along with the movement to expand the FBI definition of forcible rape, discussion at the Senate hearing about rape also focused on the need for the UCR to begin publishing arrest and exceptional clearance rates separately (see also Jarvis and Regoeczi, 2009, p. 175).

A superficial reading of this is to see it merely as a failure to conform to UCR guidelines. However, in and of itself that *is* salient because if these issues are present in the LAPD and LASD it is likely that other law enforcement agencies clear cases similarly. Ultimately, pre-arrest charge evaluations and the misuse of the exceptional clearance raise the question of the value of an arrest; is the probable cause arrest standard for law enforcement and the proof beyond a reasonable doubt to convict in a trial standard for prosecutors purely a theoretical distinction? Further research should examine the extent to which pre-arrest charge evaluations occur in sexual assault cases (and other crimes) in other jurisdictions and the degree to which charge declinations in cases evaluated prior to arrest lead to exceptional clearance of the case..

### **The Prevalence of and the Response to Nonstranger Sexual Assault**

The findings from this study indicate that sexual assault by a stranger is the least frequently occurring form of sexual assault in Los Angeles City and County in terms of cases reported to, investigated by, and prosecuted by the LAPD, LASD, and LA County District Attorney's office. However, both law enforcement officials and prosecutors spoke of public safety—specifically around the need to arrest—as more pressing and serious in cases involving strangers<sup>129</sup> (see, for example, *The Misuse of the Exceptional Clearance*, pgs. 83-118; LAPD on arrest, pgs. 185-188; LASD on arrest, pgs. 254-257; DDAs on arrest, pgs. 321-330), and detectives more frequently used the term “righteous victim” when describing the victim of a sexual assault by a stranger.

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<sup>129</sup> However, interviews revealed that depending on the criminal justice system official's approach to sexual assault victims, some stranger rape victims are even accused of lying at the outset. See Section VIII, page 231 for an LASD detective's description of the damage control that had to be done with a stranger rape victim who was accused of being a “fucking liar” by LASD personnel, and Section X, pages 394-397 about the experience of a stranger rape victim who was accused of lying by LAPD personnel.

Officials interviewed also agreed that cases involving nonstrangers had unique evidentiary challenges and, as a result, were the most difficult to successfully prosecute. However, as detectives with an “Innocent Until Proven Guilty” (as compared to those with a “Guilty Until Proven Innocent”) approach to victims and prosecutors who “Look for Corroboration” (compared to those who “Look for Reasons to Reject”) emphasized, prosecuting nonstranger sexual assault requires a nonjudgmental attitude (see *Challenges for Victims When Reporting*, pgs. 170-175; 242-245; 291-294), along with specialized training and expertise in relevant penal codes and evidence collection strategies to counter the challenges inherent to delayed reporting and the consent defense, such as: thorough documentation of statements, creating timelines, understanding social media, traumatic interviewing, and interrogation (see *How to Improve the Investigation and Prosecution of Sexual Assault*, pgs. 206-215; 282-287; 368-373). Although our interviews revealed that there are detectives and prosecutors who passionately pursue justice in these types of cases and—given their interdependent roles—communicate during a case *in service of a thorough investigation*, they also revealed that cases involving nonstrangers are often viewed with suspicion from the outset and, as a result, are less likely than those cases involving an identified suspect who is a stranger to the victim to proceed through the criminal justice system. Interviews revealed that many detectives evaluated probable cause arrest differently depending on whether the case involved strangers versus nonstrangers, and, with few exceptions, all detective and prosecutor interviewees stated that pre-arrest evaluation of nonstranger sexual assault is common. Detectives who stated that they “take the case to the DA for a reject,” which is consistent with the “guilty until proven innocent” approach to victims described in Sections VII and VIII that is most prominent in relation to nonstranger

rape, contribute to a work environment that tolerates the under-investigation of these types of cases.

The sections that follow provide a more detailed discussion of findings relevant to the district attorney's office and the two law enforcement agencies. We also discuss the ways in which the FBI's Uniform Crime Reporting Program affects the decision rules used by law enforcement agencies. Finally, we present a series of policy recommendations designed to enhance the reliability and validity of data on sexual assault case outcomes, reduce case attrition and hold those who commit crimes accountable, and improve the treatment of victims who report their crimes to law enforcement agencies.

## **THE LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE**

Our study identified three ways in which the district attorney's office contributes to sexual assault case attrition. The first is the pre-arrest charge evaluation, in which law enforcement officers bring a case to the district attorney prior to making an arrest and, when (as happens in most of these out-of-custody cases) the district attorney determines that the evidence does not meet the standard of proof beyond a reasonable doubt, clear the case by exceptional means. As we have explained in detail elsewhere, this reduces the number of cases that result in arrest and increases the number of cases that are inappropriately cleared by exceptional means. The second is the requirement that victims be interviewed before charges are filed; although there are some exceptions to this policy—for example, if the victim is assaulted by a stranger and the suspect has been arrested—generally the district attorney will not file charges until the victim has been interviewed. The third is the district attorney's de facto corroboration requirement,

which precludes the filing of charges unless there is evidence that corroborates the victim's testimony.

Based upon analysis of the quantitative and qualitative data, it appears that pre-arrest charge evaluation of nonstranger sexual assault cases is standard operating procedure. It is predicated on the notion that the police will arrest when public safety is threatened, which is minimized in nonstranger sexual assault. It also reflects a reasonable assumption that a premature arrest may jeopardize the case. As one VIP Deputy-in-Charge noted:

[Arrest is the] worst thing to do as long as the victim is not in danger. Some detectives are good and they break the guy down before coming to me. Polygraphs are spectacular. With acquaintance rape, if he argues consent: are there witnesses? They don't arrest in these cases. *Strangers you have to pickup immediately because of public safety.* If an acquaintance you have to consider the practicality of winning that case. Does she have torn pantyhose? Does she have injuries? Does he have power issues? Have they had consensual sex on other occasions? If torn things the police will arrest, or if the suspect is a flight risk. *In a sex case, unless you have DNA they won't arrest, unless he denies it, it's a stranger, she has massive injuries, tearing, or he's one of these people who leaves bite marks, but that's more the stranger.* But with acquaintances what is the practicality if trying to help the victim? It's nice for her in larger sense that he's arrested. But it doesn't assure a conviction, especially if he's saying consent. If you give me a fact pattern that tilts our way I would suggest they would arrest them right away. Some younger officers arrest immediately. The truth is it doesn't guarantee a conviction. *Most police officers bring the case to me because they'd rather have me say no [to the victim] than them say no.*

As noted earlier, although pre-arrest charge evaluation may occur in service of a thorough investigation, it often becomes an avenue through which detectives bring problematic cases to the district attorney with an expectation that the district attorney will decline to file charges. Detective then close these cases under the mistaken impression that if they do not make an arrest and a prosecutor declines to file charges based on insufficient evidence to prove the case beyond a reasonable doubt at trial, they can count a case as solved per the FBI's Uniform Crime reporting criteria to clear by exceptional means.



The net effect of this that law enforcement's—especially the LAPD's—arrest standard in some sexual assault cases—particularly those involving nonstrangers—has transformed from probable cause to proof beyond a reasonable doubt to convict at a jury trial. This amounts to more scrutiny of rape victims than is required—and that has been rejected—by California case law. For example, in 1986, six years after the removal of the resistance requirement in rape cases (1980 Cal. Penal Code § 261(2)), the California Supreme Court<sup>130</sup> stated:

In so amending section 261, subdivision (2), the Legislature has demonstrated an unwillingness to dictate a prescribed response to sexual assault... The elimination of the resistance requirement is also consistent with the modern trend of removing evidentiary obstacles unique to the prosecution of sexual assault cases. By removing resistance as a prerequisite to a rape conviction, the Legislature has brought the law of rape into conformity with other crimes such as robbery, kidnapping and assault, which require force, fear, and nonconsent to convict. In these crimes, the law does not expect falsity from the complainant who alleges their commission and thus demand resistance as a corroboration and predicate to conviction... The amendment of section 261, subdivision (2), acknowledges that *previous expectational disparities, which singled out the credibility of rape complainants as suspect, have no place in a modern system of jurisprudence.* (emphasis added)

Two years later<sup>131</sup> and again in 1992<sup>132</sup> the California Supreme Court affirmed the following precedent:

“In California, conviction of a sex crime, including rape, may be sustained upon the uncorroborated testimony of the prosecutrix.”

Legal scholars have documented the false assumptions that underlie prompt complaint requirements, corroboration requirements, and cautionary instructions to juries (among other things such as psychiatric exams and lie detector tests for victims), which have characterized the experience of female rape victims in the criminal justice system (Anderson, 2004; Temkin, 2010; see LeGrand, 1973 for current parallels to the 1970s). Prompt complaint requirements assume

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<sup>130</sup> *People v. Barnes* (1986) 42 Cal.3d 284.

<sup>131</sup> *People v. Poggi*, 753 P.2d 1082, 1095 (Cal. 1988)

<sup>132</sup> *People v. Gammage*, 2 Cal. 4th 693, 702, 828 (Cal. 1992)

that “real” victims report immediately, an assumption that conflicts with national data and the findings from this study, both of which provide consistent evidence to the contrary (Anderson, 2004: 11; Fisher & Cullen, 2000; Tjaden & Thoennes, 2006). Corroboration requirements assume that “real” victims would have corroboration such as injuries and torn clothing, and that failure to produce it means s/he was not really raped (Anderson, 2004: 12). This, too, is counter to the findings from extant research (Bachman, 2000; Tjaden & Thoennes, 2006) and the present study, both of which indicate that nonstranger sexual assault—often precisely because of the victim/suspect relationship—typically involves bodily force and/or verbal threats without the presence of weapons or serious bodily injury.

Finally, cautionary instructions to juries assume that jurors are inherently biased in favor of rape victims (Anderson, 2004:12), which is counter to the findings from extant research about juries (Kalven & Zeisel, 1969) and prosecutorial discretion in rape cases (e.g. Frohmann, 1997; Spohn et al., 2001). Moreover, criminal justice officials interviewed for this study attributed the difficulty inherent in prosecuting sexual assault in part to jurors’ biases *against* female rape victims.

### ***Policy Implications for the LA County DA’s office***

- The DA’s Office should file charges in more cases that meet the legal elements of the crime and in which the victim is willing to cooperate. To clarify, we are recommending that in cases in which the victim is cooperative, the DA’s Office should more often use a legal sufficiency standard, as opposed to a trial sufficiency standard. We are not recommending that the DA’s Office file charges using a probable cause standard.

- Establish a formal process in conjunction with law enforcement for the pre-filing interview with the victim so that one interview occurs with both law enforcement and the district attorney's office present. This will reduce the trauma for victims and make it less likely that inconsistencies in the words the victim uses to describe the assault to law enforcement officials and prosecutors will result in the rejection of charges. To clarify, we are not recommending that the pre-filing interview with the victim be eliminated.
- Given the salience of victim consistency and credibility to sexual assault prosecution, it is important to train DDAs about effective techniques for interviewing traumatized rape victims. Recall the LASD Special Victims Bureau detective who stated:

The DA's office needs as much training as we do. I did a presentation about trauma and interviewing and most of those attending were DDAs. Their reviews were more enlightening to me than the detectives.' Their eyes were opened in terms of interviewing a traumatic victim. We're so used to interviewing the day it happened. With sexual assault you have to go backwards and do a comprehensive cognitive interview because memory fails with trauma. VIP training is specialized but there are times where you will get a DDA who screens these cases and closes the door.

- Although LA County District Attorney Steve Cooley is notable for being at the forefront of providing DNA training for his prosecutors and law enforcement, the interview data suggested that both law enforcement and prosecutors had varying degrees of clarity as to the value of DNA evidence in nonstranger sexual assault cases in which the suspect utilizes a consent defense. To address this, future training could incorporate examples of sufficient evidence to prosecute in cases where the suspect uses a consent defense and clarify department expectations as to how DNA evidence is most effectively utilized to prosecute nonstranger sexual assault.

- Where possible, combine trainings for LAPD, LASD, and DA personnel who specialize in sexual assault.
- Provide detailed reasons for charge rejection and provide victims with a copy of the Charge Evaluation Worksheet when charges are rejected. For quality assurance and continuing education purposes the most frequently rejected cases could be analyzed to inform training protocols for investigations, evidence collection, and successful prosecution.
- Adequately staff VIP offices relative to the number of sex crimes. Recall the senior VIP DIC who stated that s/he does all of the pre-filing interviews and the lawyers working in that unit have about thirty cases each, which is “probably about ten cases too many for each of them.” Prosecutors, like their LAPD detective counterparts, lamented what they called “homicide fever” within their respective agencies, which amounts to more resources for and status accorded to homicide than to sex crimes despite the fact that sex crimes are more numerous than homicide and were described by some as “homicide except the victim lives.”

The next section focuses on this study’s conclusions and policy implications specific to role of both local and federal law enforcement in the perception, measurement, and investigation of sexual assault.

## **THE IMPACT OF THE FBI ON LAW ENFORCEMENT**

Although it is true that law enforcement is affected by decisions made by the district attorney’s office, the LAPD and LASD have an equally powerful role as front-end gatekeepers to the criminal justice system. However, local law enforcement cannot be understood without first

considering the impact of the FBI's Uniform Crime Reporting program in terms of its Part I definition of rape and case clearance criteria.

### **The FBI's Definition of Rape**

Recall that according to the UCR Handbook (2004), forcible rape is currently defined as “the carnal knowledge of a female forcibly and against her will. Attempts or assaults to commit rape by force or threat of force are also included; however, statutory rape (without force) and other sex offenses are excluded.” The fact that rape is defined as “carnal knowledge” means that acts that do not involve penile-vaginal penetration—including sexual penetration with an object, oral copulation, and sodomy—are not included as Part I offenses but as “other sex offenses” in Part II of the “crimes known to the police.” Also not included are cases involving male victims or female suspects. Despite the fact that most experts agree that the rape of male victims is just as serious as the rape of female victims, and would categorize sexual penetration with an object, oral copulation, and sodomy as crimes that fall within the definition of rape/sexual assault, the antiquated definition used by the FBI for Uniform Crime Reporting purposes means that these serious sex offenses are combined with the less serious sexual batteries (i.e., fondling or touching with sexual connotation) as Part II “other sex offenses.”

The implications of excluding these crimes from the definition of forcible rape are illustrated by the data provided in Table XI.2. From 2005 to 2009, the LAPD received 5,031 reports of rape and attempted rape; they received 1,061 reports of oral copulation, penetration with an object, and sodomy. If these “other sex offenses” were included in the forcible rape category, the number of reports of forcible rape received by the LAPD during this five-year time period would increase by 21 percent (from 5,031 to 6,092). The figures for the LASD are similar. From 2005 to 2009, the LASD received 2,269 reports of rape and attempted rape; they

received 630 reports of oral copulation, penetration with an object, and sodomy. Including these “other sex offenses” in the forcible rape category would have increased the number of reports of forcible rape received by the LASD by more than 27 percent (from 2,269 to 2,899). Stated another way, 17.4 percent of the reports received by the LAPD and 21.7 percent of the reports received by the LASD during these five years were reports of penetration with a foreign object, oral copulation, and sodomy.

Table XI.2 Reports of Sex Offenses, 2005 to 2009: LAPD AND LASD

	N	%
<b>Reports Received by LAPD</b>		
Rape or Attempt Rape per UCR definition	5031	82.6
Sexual Penetration with a Foreign Object	202	3.3
Oral Copulation	496	8.1
Sodomy	363	6.0
<b>Reports Received by LASD</b>		
Rape or Attempt Rape per UCR definition	2269	78.2
Sexual Penetration with a Foreign Object	214	7.4
Oral Copulation	303	10.4
Sodomy	113	3.9

The national prominence of the UCR program and its impact on local law enforcement cannot be underestimated. According to the FBI website, in 2009 there were 17,985 city, county, university and college, state, tribal, and federal agencies that participated in the UCR Program. Together they represented 96.3 percent of the Nation’s population.<sup>133</sup> Part I crimes are deemed the most serious, and police chiefs and sheriffs are held accountable for Part I numbers in their jurisdictions. Moreover, as law enforcement is increasingly evidence-based and numbers-driven in its administration of justice, Part I numbers drive law enforcement executives’ resource allocation. As was evident in the findings from Los Angeles City and County, measuring rape

<sup>133</sup> [http://www2.fbi.gov/ucr/cius2009/about/crime\\_summary.html](http://www2.fbi.gov/ucr/cius2009/about/crime_summary.html)

using the current UCR definition misleads the public about the reality of sexual assault within their communities and undercounts the numbers of sexual assault cases that detectives as a practical reality are investigating.

Perhaps the most problematic issue is that the current UCR definition of rape negatively impacts law enforcement decision-makers' perceptions of the severity and pervasiveness of sexual assault, thus resulting in resource allocation and deployment strategies which are calculated based on categorically invalid Part I rape counts. Consequently, an expanded Part I definition of rape will increase the effectiveness of the law enforcement response to it, and sexual assault data will for the first time be reliable and valid. For the FBI to take on this issue and make evidenced-based changes it will set a powerful tone because how we as a society define a problem—and UCR data is our basis for assessing the prevalence of crime in the US—sets a precedent for the severity of our response to it.

As of this writing FBI Director Robert Mueller and US Attorney General Eric Holder have moved to expand the Part I definition of rape to increase confidence that “the number of victims of this heinous crime will be more accurately reflected in national crime statistics.”<sup>134</sup> While expanding the definition of rape is an important evidenced-based policy change, the findings from this study raise a less frequently discussed issue: FBI *clearance* data is compromised because the single percentage presented to the public about Los Angeles that reports a combined total of cases cleared by arrest and cleared by exceptional means inflates the extent to which sexual assaults—particularly cases involving nonstrangers—are truly “solved” given that detectives: (1) exceptionally clear cases more often than clearing by arrest; (2) exceptionally clear cases after making an arrest when the DA declines to file charges; (3)

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<sup>134</sup> [http://www.fbi.gov/news/news\\_blog/revised-rape-definition-approved-for-uniform-crime-reporting-program](http://www.fbi.gov/news/news_blog/revised-rape-definition-approved-for-uniform-crime-reporting-program) (retrieved January 14, 2012).

exceptionally clear cases during a pre-arrest charge evaluation when probable cause may exist but they abstain from making an arrest when a DDA declines to file charges.

### ***Policy Implications for the FBI's UCR Program***

- Specific to UCR Part I definition expansion, it should include oral copulation, sodomy, and rape with a foreign object regardless of the gender of the suspect and victim.

Insert a footnote in future *Crime in the United States* reports to clarify that rape numbers have not suddenly increased; rather, the FBI is for the first time providing an accurate measure to reflect the reality of rape as it manifests in the criminal justice system.

Any changes should be consistent and applied to both the UCR and NIBRS programs given the ubiquity with which UCR statistics continue to be relied upon by law enforcement executives, police and sheriffs' departments, public officials, researchers, and concerned citizens.

- Revise the UCR Handbook to clarify any law enforcement misunderstanding that the district attorney plays a role in case clearances, and to make it clear that for the FBI clearances are based on the police evidentiary standard of probable cause to make an arrest.
- Specifically, clarify that: (1) "arrested and charged" means a booking procedure by the police; (2) a case that results in an arrest cannot be cleared exceptionally since one of the criteria for an exceptional clearance is that there is something beyond the control of law enforcement that prevents them from making an arrest.
- Present the percentage of cases cleared by arrest and cleared exceptionally separately rather than combined, as is the current practice. This contributes to an organizational



reluctance to address the misuse of the exceptional clearance by detectives because police leadership are aware that ultimately the FBI presents only one statistic to the public, which is misleading as to how cases are being “solved,” especially if the exceptional clearance is being misused, as is the case in Los Angeles.

- Given that rape inherently involves force it is redundant to label it “Forcible” rape. Consider renaming it Rape or Sexual Assault to be consistent with established criminological and epidemiological terminology.

## **IMPROVING LAPD AND LASD SEXUAL ASSAULT INVESTIGATIONS**

Sexual crimes and domestic violence are the most nuanced and sensitive cases ever. People have gang fever but sex crimes are so subtle. When you get detectives who are there to seek the truth rather than have an agenda. It’s horrible when a detective says ‘She really got raped.’ The LASD Special Victims Bureau has a lot of experience. They know how to ask questions to create a scenario that is safe. You have to pursue every little statement

--VIP Deputy District Attorney

Have detectives and DAs dedicated to the job who are patient, nonjudgmental, and come into it believing victims and looking for ways to find corroboration. I find that if a detective already has an opinion it affects the investigation.

--VIP Deputy District Attorney

They should come up with some kind of set questions that they ask people, without open-ended ones. Something other than ‘Did you invite this guy over to have sex with you?’ That is not a question to ask a victim. I would devise a method about the way to ask questions. They are not going to get the truth out that way because it puts you on the defense. --Sexual assault survivor

### ***Investigating and Clearing/Solving Cases***

Although many detectives evidenced an “innocent until proven guilty” approach to victims and demonstrated through heartfelt, passionate responses that sexual assault in all of its forms is complex and requires thorough investigation, process and structure are much more

powerful than any individual. LAPD and LASD leadership are uniquely situated to clarify clearance policies for detectives and to establish high standards for working and supervising sexual assault cases. Departments that set a tone of professionalism and integrity in sexual assault investigations will increase the desirability to work sex crimes. The findings are clear that nonstranger cases require a different investigative strategy to overcome the consent defense, a strategy that is primarily focused on obtaining statements from suspects through excellent interview and interrogation skills as opposed to relying upon DNA as the “smoking gun.” Law enforcement should appropriately investigate sexual assault regardless of the victim’s relationship to the suspect and should make more probable cause arrests in cases in which the victim is willing to cooperate in the investigation and prosecution of the case.

***Policy Implications for the LAPD and LASD***

- Regardless of victim age or relationship to the suspect, a professional law enforcement response to sexual assault requires specialized units that are important to department leadership and staffed with detectives and supervisors who want to work these types of cases.
- Ongoing, specialized training is critical in, at the minimum, interviewing victims, interrogating suspects, and the penal code.
- Nonstranger sexual assault is the most frequent type of case seen by law enforcement, and therefore training must specifically address investigation of this type of case.
- Both patrol officers and detectives require specialized sexual assault training because a poorly written report, inability to build rapport with victims to gather information, and failing to ask appropriate questions often create the inconsistencies that damage the victim’s credibility and contribute to case attrition.

- Emphasize in training that delayed reporting is the norm in these cases, rather than anomalous.
- All investigation and evidence collection-related training activities should always have at least one (if not more) nonstranger example for every stranger example, and should reiterate that the armed stranger jumping from the bushes—while an important public safety issue to address—is not the norm.
- Incorporate active learning exercises specific to California case law in patrol and detective training in sex crimes to increase familiarity with and preparation for trial-related issues and how they are resolved.
- Suspects must be interviewed *in person*. If a suspect is interviewed by phone it should be *in service of a thorough investigation*, i.e. to bypass Miranda.

Record all interviews

- To be effective, law enforcement must engage the victim as an ally in the investigation. A pretext phone call is much more likely to be successful if the victim and detective are “partners” in the process, but there must be additional investigative strategies to rely upon other than the pretext call. Social networking websites, cell phone messages, and the Internet were repeatedly cited as salient in nonstranger cases in terms of potential evidence.
- Identify evidentiary priorities beyond the pretext phone call to be emphasized in training to investigate nonstranger cases given that the presence of DNA does not negate a consent defense.
- Another issue to consider is that DNA evidence can be used to link suspects to prior or subsequent crimes.

- The exceptional clearance should be used only if the case meets UCR criteria for using this type of case clearance.
- For the FBI, case clearances are based on the police standard of probable cause to make an arrest; prosecutorial decisions are irrelevant.
- A probable cause arrest for FBI/UCR purposes means the case is cleared by arrest.
- Cases cleared by exceptional means by definition do not involve cases that result in an arrest and should occur less frequently than cases cleared by arrest.
- A DA's declination for insufficient evidence cannot be cleared by exceptional means if the detective has probable cause to make an arrest but chooses instead to present the case without making the arrest; it must be kept open.
- Assuming a thorough investigation, in cases in which probable cause exists (and in which the victim is willing to cooperate), the police generally should make an arrest and clear the case by arrest.
- Whether a suspect is arrested should not be contingent on whether the prosecuting attorney believes that the evidence meets a standard of proof beyond a reasonable doubt and that the case therefore would result in a jury conviction. Doing so subjects the decision to arrest to a higher standard of proof than is required by law and effectively gives the prosecutor control over the decision to arrest. It also means that individuals who may have committed a serious crime are not held accountable for their behavior and denies justice to victims who made a difficult decision to report the crime and are willing to cooperate with the police and prosecutor as the case moves forward.
- Failure to make an arrest in spite of probable cause to do so is reminiscent of police inaction in response to domestic violence prior to the implementation of mandatory arrest

policies. Although we are not suggesting that police departments should adopt mandatory arrest policies for sexual assault cases, they should make an arrest when there is sufficient evidence that a crime occurred and that the suspect is the person who committed the crime.

- Failure to arrest when there is probable cause to make an arrest has other implications as well. It means that the suspect's behavior in this case will not be part of his/her criminal record and therefore cannot be used to link the suspect to subsequent cases with similar modus operandi.<sup>135</sup> Detectives interviewed for this study emphasized the importance of examining a suspect's criminal history for evidence of prior allegations that could corroborate the victim's account of the crime. Failure to arrest the suspect means that this type of evidence will not be available. Related to this, if the suspect is arrested for a felony his/her DNA must be entered into the state's DNA database (California Penal Code § 295-300.2<sup>136</sup>). If the suspect commits a subsequent sexual assault and leaves behind forensic evidence, the fact that her/his DNA is part of the state DNA database means the suspect's identity can be determined. Conversely, if the suspect is not arrested his/her DNA does not become part of the database and the suspect cannot be linked to subsequent crimes.
- Clearly, there are cases where the police cannot—indeed should not—make an arrest. If probable cause to arrest does not exist or if the prosecutor rejects the case for further investigation as a result of a pre-arrest charge evaluation, the case should be left open and

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<sup>135</sup> A nurse who has specialized in forensic evidence collection in sexual assault cases for fifteen years stated an added benefit of having the suspect in custody is the ability to conduct a suspect SART exam without a search warrant on the basis of exigent circumstances (K. Adams, Personal Communication, December 29, 2010).

<sup>136</sup> On August 4, 2011 the California Court of Appeals struck down the law as unconstitutional in *People v. Buza* (2011) Cal. App Lexis 1006. As of this writing the Attorney General's office is reviewing the case and it is uncertain whether they will appeal to the California Supreme Court.

investigated further. These cases *should not* be cleared by exceptional means, as they do not meet the UCR criterion that there must be “enough information to support an arrest, charge, and turning over to the court for prosecution.” The case cannot be solved—that is, cleared—if probable cause to make an arrest does not exist.

- Cases in which the police know who and where the suspect is and in which probable cause exists to make an arrest, but the victim refuses to cooperate with the police can legitimately be cleared by exceptional means if the victim’s lack of cooperation means that the police cannot make an arrest. However, even in these situations, the outcome is affected by the investigation of the case and the treatment of the victim.

Incorporating rape crisis advocates into the process early will free up detectives to focus on the investigation. Recall the LAPD detective who stated:

You have to be more available for our victims, which can be time consuming and tiring. Some need more attention than others for whatever reason, no family support, etc. Through the DA’s office or Victims of Crime you need a person separate from person who does documentation; an advocate who works with police, not just the DA’s office, who they can go to and just talk to if they have a problem or are not sure how to do something. It could be a civilian; someone to help out with those additional needs that are not really part of the case which are more personal. Advocates should go out with sex detectives. I know that 75 to 80 percent [of detectives] wouldn’t want it but eventually they would get used to it.

- The LAPD should reexamine department policy<sup>137</sup> to ensure consistency with the UCR so that felony cases are cleared by arrest upon the arrest of at least one suspect, and detectives’ arrest decisions are less influenced by their perceptions of prosecutorial inaction.

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<sup>137</sup> If the department is concerned with the constitutionality of arrests there are other means to track this such as Probable Cause Determinations, TEAMS (Training, Evaluation, and Management) II reports, and the Detective Case Tracking System.

- The LAPD should develop a manual specific to investigating sex crimes that codifies the policies and expectations of detectives (similar to LASD’s Special Victims Manual but including the dynamics specific to teenager and adult victims)
- Rather than handling only cases involving victims under the age of eighteen, LASD’s Special Victims Bureau should assume responsibility for the investigation of all sexual assault cases. The majority of LASD detectives requested this and the DDA interviewees overwhelmingly reiterated that Special Victims Bureau detectives are the best equipped to investigate sexual assault.
- Unless all sex crimes detectives and supervisors utilize an “Innocent until proven guilty” approach to victims, the net effect of non-crime reports is to unfound a case without having to do so officially via UCR reporting. This is particularly relevant for the LASD to consider given their five-year unfounding rate was 1.1 percent. The LAPD’s unfounding rate from 2005-2009 was 10.9 percent, which is consistent with the national average (see Sections II and IV). Consider the following statements from an LAPD and LASD detective about non-crime reports in sexual assault cases:

Ninety-five percent of the time to unfound you want a victim to recant. There is going to be a certain amount of unfounded with teen victims. Teens more than adults will stick to a story no matter how much evidence is thrown at them. You may find conclusively that something did not occur, i.e. a camera shows she was not there at the time, and she will say blindly ‘Yes, I was there.’ You have to build evidence in this case to show it couldn’t have possibly occurred. The same will show with mentally ill cases. We have done a great thing with the Undetermined Sexual Assault report where something is placed in a non-crime report category and either upgraded as a crime report or left as is to say there is no way a crime occurred. For instance, ‘I woke up with my underwear on backwards. I think I might have been raped.’ That would be Undetermined. If we go as investigators to find out what happened, to see who was in the house, are there signs of break in, it could be upgraded to crime a report. But if she says no one was here, no one lives with me, then that case would stay as an Undetermined Sexual Assault non-crime report. This form started in 2010, January. Prior to that we were putting them on injury reports and having to unfound them.

–LAPD detective

They have to relive and retell the incident over and over again; fear and embarrassment about what happened to them; fear that people will pass judgment on their choices. I do think that there are times when you get so used to hearing the same old song and dance and don't see the evidence to back up their statements and so you judge them off the bat. But things are getting better. I would say that 99 percent of our deputies will take the report even if they don't think that it happened and then allow a detective to make the decision as to whether something happened or not. An incident can be documented as 'Suspicious Circumstances, Possible Rape.' This is a non-criminal report but it is referred to me and when I get enough information to show that it really happened I can change the status to a crime.

--LASD detective

- Classifying and clearing crime reports is a highly discretionary decision. If patrol officers and detectives (and their supervisors) with a “guilty until proven innocent” attitude toward rape victims determine whether sexual assault cases will be classified as crimes and investigated, it is unlikely that a non-crime report will be reclassified into a crime report (which requires a clearance; otherwise, the case stays on record as an open/unsolved case). It is important to understand that non-crime reports do not need to be cleared for the purposes of UCR reporting, and several different law enforcement officials from both LAPD and LASD described the use of non-crime reports as “fighting crime with an eraser.”

## **CONCLUSION: SEXUAL ASSAULT IN LOS ANGELES CITY AND COUNTY**

The results of this study demonstrate that sexual assaults reported to the Los Angeles Police Department and the Los Angeles County Sheriff's Department have a high rate of case attrition. Very few cases, especially those that involve nonstrangers, result in the arrest and conviction of the suspect. The high rate of attrition in these cases reflects a collaborative gatekeeping process involving both law enforcement agencies and the district attorney's office.



The low arrest rate reflects law enforcement's inability to conclusively identify a suspect in all cases involving strangers; more importantly, it reflects their unwillingness to make an arrest in cases involving nonstrangers absent a district attorney's assessment that there is proof beyond a reasonable doubt and that the case has a high probability of conviction at trial. This unwillingness to arrest is also based on the incorrect assumption that cases in which the district attorney refuses to file charges can be "solved," or cleared for Uniform Crime Reporting purposes, through the use of the exceptional clearance. The low overall conviction rate reflects a pre-arrest and post-arrest charge evaluation process in which only cases that meet the standard of proof beyond a reasonable doubt are filed, as well as the requirements that the victim be interviewed prior to filing and that her allegations be corroborated. The result of this highly discretionary decision making process is that it is primarily the atypical "slam-dunk cases" that result in the arrest, prosecution, and conviction of the suspect. The more typical cases in which the victim and the suspect are nonstrangers and there is probable cause (but not proof beyond a reasonable doubt) that a crime was committed and the suspect is the person who committed the crime are screened out early in the process and do not result in the arrest of the suspect. The result is that, as was the case in the pre-rape law reform era, only "real rapes" (Estrich, 1987) with "genuine victims" (LaFree, 1989) are taken seriously by the criminal justice system.

A successful and effective criminal justice response to sexual assault requires, first and foremost, genuine and courageous leadership. It also requires specialized training and specialized units—regardless of victim age—given the skills required to conduct lengthy interviews with traumatized individuals, the evidentiary challenges, and the fact that second to homicide, it is the most serious crime yet simultaneously the most underreported and under-prosecuted. Law enforcement executives are uniquely positioned to facilitate change in this arena, and we would

like to recognize the initiative of LAPD Chief Charlie Beck, LA County Sheriff Leroy Baca, and LA County District Attorney Steve Cooley for choosing to partner with researchers to examine the factors that underlie sexual assault case attrition in Los Angeles as a means to better serve victims and the pursuit of justice in these cases. It is leadership of this nature that will translate into a criminal justice environment in which victims are not intimidated, rape myths are challenged rather than accepted, crime reports are appropriately investigated, and suspects are held accountable.

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## **APPENDIX A**

### **INTERVIEW PROTOCOLS**

#### **Decision Making in Sexual Assault Cases: Law Enforcement**

##### **Part I            Training and Investigation of Sex Crimes**

How long have you been in law enforcement?

How long have you been with the LAPD/LASD?

How long have you been investigating sex crimes?

Did you request this assignment? (If so, why?)

Did you receive any specialized training in the investigation of sex crimes?

If so, type of training? Who delivered it? Number of specialized trainings?

If not, should there be some type of specialized training? Why or why not?

##### **Part II            Sexual Assault Case Processing**

1. In your experience, which types of sexual assaults are least likely to result in arrest and successful prosecution? Which types are most likely to result in arrest and successful prosecution?
  - a. Probe: what are the obstacles that you encounter in these types of cases?
  - b. Probe: What are the “decision rules” that you follow in deciding whether to make an arrest or not? What do you need to make an arrest in a rape case?
2. In your experience, what are the characteristics of cases that are most often “cleared other”?
3. Do you present cases involving identified suspects to the DA’s Office for review before an arrest is made?
  - a. If yes, what is the rationale for allowing the DA to evaluate the case before an arrest is made?
    - i. Is this standard operating procedure for all felonies or only for sex crimes?
    - ii. Probe: What happens to the case if the DDA says that it does not meet the DA’s standard for filing?
    - iii. Can you appeal this decision? (If so, to whom do you appeal? How often does this happen?)
    - iv. Does the DA ever send the case back to you for further investigation? How often does this happen? In which types of cases?
  - b. If no, to clarify, the DA’s office does not evaluate sex crimes prior to an arrest being made?
4. How do you decide whether a sexual assault case should be unfounded?
  - a. What standards do you use in making this decision?
    - i. Probe: Do victims have to recant their testimony?

- ii. Probe: Will a case be unfounded if a victim “disappears” after making the initial report?
- b. Are there any particular types of cases that have a higher likelihood of being unfounded than others?
  - i. Can you provide an example of a case that was unfounded and explain why it was unfounded?
- c. What if a victim recants but the evidence and case factors in their totality suggest that s/he was indeed forced and recanting may be due to threats/intimidation (DV, gang affiliated suspects/witnesses)? How will this type of case be cleared?

### **Part III      Victim Management and Evidence**

We know that the credibility of the victim plays a role in sexual assault case processing decisions. How do you evaluate victim credibility?

Probe: What leads you to question whether the victim is telling the truth?

What role does use of drugs or alcohol by the victim and/or the suspect play in case outcomes?

How do you establish rapport with victims?

What if the victim is reluctant, hostile and/or uncooperative?

What would motivate someone to file a false report? How do you know that the report is false?

What if there is no evidence that can corroborate the testimony of the victim—it is a he said/she said case. How is this case likely to be resolved?

How does the relationship between the victim and the suspect affect the investigation of a sexual assault report?

Probe: Assume that the victim and the suspect have (or had) an intimate relationship.

Probe: Assume that the victim and the suspect are acquaintances?

### **PART IV      Relationship with the DA’s Office**

How would you describe your office’s relationship with the District Attorney’s Office (with respect to sex crimes)?

Probe: can you describe a recent experience in which you felt satisfied with your interaction with the DA’s Office? Dissatisfied?

### **CONCLUSION**

If the LAPD/LASD had unlimited resources, what would be the best way to increase the number of arrests and successful prosecutions in sexual assault cases?

In your opinion, what are the biggest challenges faced by victims when reporting a sexual assault? What role should law enforcement and the DA's Office play in decreasing the difficulties associated with rape victimization for victims?

## **Decision Making in Sexual Assault Cases: Deputy District Attorneys**

### **Part I Training and Investigation of Sex Crimes**

How long have you been a prosecuting attorney?

How long have you been with the LADA's Office?

How long have you been investigating sex crimes?

Did you request this assignment? (If so, why?)

Did you receive any specialized training in the investigation of sex crimes?

If so, type of training? Who delivered it? Number of specialized trainings?

If not, should there be some type of specialized training? Why or why not?

### **Part II Sexual Assault Case Processing Decisions**

1. Studies have shown that there is a high rate of case attrition in sexual assault cases. What accounts for this?
  - a. Probe: In your experience, which types of sexual assaults are least likely to result in successful prosecution? Which types are most likely to result in successful prosecution?
  - b. Probe: Our research revealed that only 12.5% of the cases reported to the LAPD and only about a third of the cases reported to the LASD resulted in arrest and referral to your office. Why is the arrest rate so low in these types of cases?
2. Our review of the LAPD and LASD case files revealed that many sexual assault cases are presented to your office for pre-filing consideration—that is, the police know with some degree of certainty who the suspect is but they will not make an arrest unless the DDA reviewing the case indicates that there is sufficient evidence to move forward. Is this standard operating procedure in sexual assault cases?
  - a. Does this occur in other types of cases? If so, what types of cases?
  - b. If the police have probable cause to make an arrest, why don't they arrest the suspect and then present the case to you for a charging decision?
  - c. Do you ever send the case back to the police for further investigation? How often does this happen? In which types of cases?
3. Are charging decisions in sexual assault cases based on a standard of probable cause, proof beyond a reasonable doubt, or something else?

Will you file charges if all of the legal elements of the crime (penetration, lack of consent, force) are present or do you evaluate the case based on the likely outcome if the defendant is tried before a jury?

  - a. Do you use the same standard in evaluating the case prior to arrest as you do in making a charging decision following arrest?
  - b. Are there any types of cases where you would file charges even though you believed that the likelihood of conviction was low?
4. What factors do you take into account in deciding whether to file charges or not in a sexual assault case? What factors would incline you to reject the case?

5. How often does DNA evidence come into play in these cases? Are jurors looking for DNA evidence in sexual assault cases?
6. Studies also have shown that the credibility of the victim plays a role in sexual assault case processing decisions. How do you evaluate victim credibility?  
What leads you to question whether the victim is telling the truth?  
What role does use of drugs or alcohol by the victim and/or the suspect play in case outcomes?

How do establish rapport with victims?

What if the victim is reluctant, hostile or uncooperative?

7. In a “she said/he said” case, is corroboration of the victim’s testimony required?
  - a. What type of corroboration are you looking for?
  - b. Are there “she said/he said” cases where you would file charges without any evidence that corroborates the victim’s testimony?
8. How does the relationship between the suspect and the victim affect charging decisions?  
Probe: Assume that the victim and the suspect have (or had) an intimate relationship.  
Probe: Assume that the victim and the suspect are acquaintances.  
Once sexual assault or sexual battery charges have been filed and the defendant has been bound over for trial, what would lead to dismissal of the charges?  
What are the most common types of plea agreements in sexual assault cases in this jurisdiction?  
Do prosecutors reduce the seriousness of the primary charge, reduce the number of charges, suggest a particular sentence, agree to stand mute at sentencing?  
How would you describe the typical rape in this jurisdiction?

## CONCLUSION

How would you describe your office’s relationship with the Los Angeles Police Department (Los Angeles County Sheriff’s Department) with respect to sex crimes?

If there were unlimited resources, what would be the best way to increase the number of sexual assault reports in which a suspect is arrested and successfully prosecuted?

In your opinion, what are the biggest challenges faced by victims when reporting a sexual assault? What role should the police and DA’s Office play in decreasing the difficulties associated with rape victimization for victims?

## **FOCUS GROUP QUESTIONS FOR SEXUAL ASSAULT SURVIVORS**

### **PART I: DECISION TO REPORT**

1. What made you decide to report (or not)?
  - Probe: delayed reporting
  - If you did report were your goals met?
  - If you did report and were to be assaulted again would you report again?
  - Did you make the report or was it made by another person?
  - Do you think the reporting was helpful or harmful to you?
  - Relationship to suspect
  - Safety concerns
  - Role of alcohol/DFSA
  - Trauma symptoms

### **PART II: THE POLICE**

2. What was the nature of your interaction with law enforcement?
  - Probe: Timeline
  - Were you advised of your rights as a victim (SA, DV, Marsy's Law)?
  - With whom from law enforcement did you interact (patrol/detective; fe/male)?
  - Did you have a SART exam?
  - Was the suspect interviewed/arrested?

### **PART III: THE DISTRICT ATTORNEY'S OFFICE**

3. What was the nature of your interaction with the District Attorney's Office?
  - Probe: Timeline
  - With whom from the DA's office did you interact?
  - How many times were you interviewed?
  - Were charges filed against the suspect? Why or why not?

### **PART IV: THE FUTURE**

4. If a person came to you and shared they had been raped and or are in a DV relationship what advice would you give them about reporting and how would you characterize the process from report to prosecution.
5. If you were appointed as Special Advisor to the Chief of Police and the District Attorney's Office, how would you improve the law enforcement response to sexual assault?



## **APPENDIX B: LETTER FROM FBI**



U.S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

January 14, 2011

Cassia Spahn, Ph.D.  
School of Criminology and Criminal Justice  
Arizona State University  
Suite 600, MC 4420  
411 North Central Avenue  
Phoenix, AZ 85004-3685

Dear Dr. Spahn:

In response to your letter dated December 14, 2010, listed below are the official FBI Uniform Crime Reporting (UCR) Program's clearance guidelines which were extracted from the *UCR Handbook*. Crimes are cleared in one of two ways, arrest or exceptional means.

- **Cleared by Arrest.** An offense is cleared by arrest, or solved for crime reporting purposes, when at least one person is (1) arrested, (2) charged with the commission of the offense, and (3) turned over to the court for prosecution (whether following arrest, court summons, or police notice). In addition, whether the prosecutor files a criminal complaint is *irrelevant* to law enforcement's ability to clear the offense by arrest.
- **Cleared by Exceptional Means.** In certain situations, law enforcement is not able to follow the three steps outlined under "Cleared by Arrest" to clear offenses known to them. Often they have exhausted all leads and have done everything possible in order to clear a case. If agencies can answer all of the following questions in the affirmative, they can clear the offense *exceptionally* for the purpose of reporting to UCR. (The decision by the prosecutor to file charges or not, is not one of the required critical elements that must be met when determining if an offense is cleared exceptionally.)
  - (1) Has the investigation definitely established the identity of the offender?
  - (2) Is there enough information to support an arrest, charge, and turning over to the court for prosecution?
  - (3) Is the exact location of the offender known so that the subject could be taken into custody now?
  - (4) Is there some reason outside law enforcement control that precludes arresting, charging, and prosecuting the offender?

Cassia Spoltr, Ph.D.

The guidelines are those by which law enforcement agencies participating in the national UCR Program report clearance and arrest data to the FBI. Statistics collected within the UCR Program are derived from crimes brought to the attention of law enforcement. For UCR Program purposes, clearance statistics are only collected for the violent crime offenses of murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault and the property crime offenses of burglary, larceny-theft, motor vehicle theft, and arson. It is these offenses that can be cleared by arrest or exceptional means. Furthermore, the UCR Program does not identify an offense as a felony or misdemeanor.

Your request for clarification "that police perception of prosecutorial action should not dictate arrest posture, nor does it qualify a case with probable cause to arrest (but not necessarily proof beyond a reasonable doubt to convict at trial) to be cleared exceptionally" are not requirements to report an arrest or for clearing an offense, and therefore, your statement is accurate.

If you have additional questions, please contact Mr. Gregory E. Scarbro, Unit Chief, Crime Statistics Management Unit, Module F3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26303; telephone (304) 625-4830.

Sincerely yours,



Robert J. Casey  
Section Chief  
Law Enforcement Support Section  
Criminal Justice Information  
Services Division

1 Katharine Tellis, MSW, Ph.D.  
School of Criminology and Criminal Justice  
Arizona State University  
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## APPENDIX C: LAPD, LASD, AND LA DA RESPONSES TO THE STUDY

### Researchers' Introduction to the Agency Responses

In the spirit of collaboration, we invited each of the three agencies with whom we worked on this project to review our final report and to submit a response to our findings, conclusions, and recommendations. We want to thank the representatives from each agency for their feedback and for their willingness to consider our policy recommendations.

Although the LAPD and the LASD agree with our many of our findings and policy recommendations, the LADA raises a number of objections. The purpose of this document is to summarize what we believe are misinterpretations and misstatements of the findings, conclusions, and recommendations of our NIJ study of policing and prosecuting sexual assault in Los Angeles that are found in the response of the Los Angeles County District Attorney (LADA). We have six areas of concern.

**First and foremost**, we are very concerned that the LADA response calls our integrity as researchers into question. The LADA's response states on p. 2 that our report reflects both "faculty analysis of the data" and "biased interpretation of the data." These statements suggest that we have used inappropriate techniques to analyze our data and that the interpretation of our findings was subjective, not objective. We stand by the analysis we have conducted and believe that our findings are accurate. We do not believe that our analysis is faulty or flawed or that our interpretation of the data is biased.

**Second**, we believe that there are many places in the LADA response that reflect a misstatement or misinterpretation of our findings. For example, there is a statement on p.2 that "The researchers consistently and stunningly expressed the position that proof beyond a reasonable doubt was too high a case filing standard . . ." On p. 1 there is an assertion that "The perspective, conclusions, and policy recommendations are inconsistent with American constitutional principles of justice . . ." and on p. 4 there is a statement that "The recommendations made by the authors of this report as applied to the prosecution of sexual assault cases in Los Angeles County fly in the face of the ethical and constitutional duties of a prosecutor."

Nowhere in the NIJ final report do we assert that proof beyond a reasonable doubt is too high a filing standard. On the contrary, the NIJ Study focuses primarily upon the arrest standard of law enforcement, not the case filing standard of the DA's Office. We state in our final report that "law enforcement's - especially the LAPD's - arrest standard in sexual assault - particularly those involving non strangers - has transformed from probable cause to proof beyond a reasonable doubt . . ." (NIJ Final Report, p. 417). Our concern is that the standard that law enforcement employs when determining whether to arrest a suspect is higher than it should be.

Moreover, our recommendation, which is just that—a recommendation, that the DA’s office file more charges using a legal sufficiency standard rather than a trial sufficiency standard is not inconsistent with constitutional principles of justice or with prior research involving 19 prosecutor’s offices throughout the United States that identified the legal sufficiency policy as one of four standards for making filing decisions (Jacoby 1980). This is not, as the LADA states on p. 6 “a new standard for case filings.” The United States Supreme Court stated in 1978 that “So long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury generally rests entirely in his discretion” (*Bordenkircher v. Hayes*, 434 U.S. 357, 364 [1978]).

In addition, Rule 3.8 of the American Bar Association’s Model Rules of Professional Conduct<sup>138</sup> states that “The prosecutor in a criminal case shall refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause.” The Rules of Professional Conduct promulgated by the State Bar of California similarly states (Rule 5-110, “Performing the duty of Member in Government Service”) “A member in government service shall not institute or cause to be instituted criminal charges when the member knows or should know that the charges are not supported by probable cause.” That the LADA’s policy manual dictates a proof beyond a reasonable doubt filing standard does not negate the fact that filing charges based on “probable cause to believe that the accused committed an offense defined by statute” is consistent with Supreme Court rulings and with the ABA’s Model Rules of Professional Conduct.

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**A third area** where we believe that the LADA’s response has misinterpreted our conclusions and recommendations is also found in the executive summary, where it is stated on p. 2 that “the authors of the project are recommending that the District Attorney’s Office file sexual assault charges based on the expressed desire of the victim alone . . . where a crime report has been prepared alleging sufficient factors to meet the elements of the offense without the need for corroborating evidence and preferably without a pre-filing interview with the victim.” Nowhere in the report do we recommend that charges be filed without a pre-filing interview with the victim. Our only recommendation regarding the pre-filing interview is that, where possible, a single interview involving representatives from law enforcement and from the prosecutor’s office be conducted. Related to this, it is a misinterpretation to characterize our recommendations as a “carte blanche validation of the desire of a victim to file a case.” Nowhere in the report do we make such a recommendation.

**Fourth**, the LADA’s response indicates on p. 3 that “the reality of the court process . . . would actually increase the likelihood of a not guilty verdict should the practices recommended by the

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<sup>138</sup> David Keenan, Deborah Jane Cooper, David Lebowitz, & Tamar Lerer, “The Myth of Prosecutorial Accountability after *Connick v. Thompson*: Why Existing Professional Responsibility Measures Cannot Protect Against Prosecutorial Misconduct,” Yale Law Journal Online. Available at <http://yalelawjournal.org/the-yale-law-journal-pocket-part/supreme-court/the-myth-of-prosecutorial-accountability-after-connick-v.-thompson-why-existing-professional-responsibility-measures-cannot-protect-against-prosecutorial-misconduct/>

authors be adopted.” We believe that this, too, reflects a misinterpretation of our recommendation that more cases be filed using a legal sufficiency (as opposed to a trial sufficiency) standard. We are not recommending that the DA’s office proceed to trial in cases in which the likelihood of conviction at trial is low. We believe that “the reality of the court process” is such that these cases either would be screened out at the preliminary hearing or dismissed by the state; alternatively, such cases (given the reality of case disposition—that is, most cases are disposed of by plea, not by trial) might result in a guilty plea by the defendant.

**Fifth**, the LADA response has a section entitled “Study Recommendations: A Tag and Release Program,” in which the authors imply the NIJ Study recommends that the LADA file cases simply to ensure a suspect is arrested, a criminal history is established, or that a DNA sample is maintained (LADA Response, p. 10). Nowhere in the NIJ Study do we take this position. We do argue that these are negative consequences of law enforcement’s failure to make an arrest.

**Sixth**, we stand by our conclusions regarding the existence of a pre-arrest charge evaluation process. In an earlier email, we the LADA with evidence that supports the existence of this process. We base our conclusions regarding this on (1) the fact that the declination rate is 96.8% for cases presented prior to arrest but was only 28.9% for cases presented after an arrest was made; (2) the fact that the multinomial logistic regression analysis (see NIJ Final Report, Table VI.4) revealed that different variables affected the two indicators of charge rejection (that is, rejection before and after an arrest); (3) statements made by law enforcement and district attorneys.

#### **The following information was provided to the LADA in an email dated October 20, 2011**

For the NIJ-funded study of decision making in sexual assault cases, we collected data on case characteristics and case outcomes from redacted police files provided by the Los Angeles Police Department (LAPD) and the Los Angeles County Sheriff’s Department (LASD). There were a total of 650 cases in which the most serious allegation was either rape or attempted rape (which includes rape, spousal rape, rape by intoxication, penetration with a foreign object, oral copulation, and sodomy).

Of these 650 cases, 383 (58.9%) were presented to the district attorney for a charging decision. The remaining 267 cases (41.1%) were either unfounded ( $n = 76$ ) cleared by exceptional means without being presented to the district attorney for a charging decision ( $n = 98$ ), or were cases in which the investigation was continuing ( $n = 77$ ) or in which an arrest was made but there was no indication in the case file that the case was presented to the district attorney for a charging decision ( $n = 16$ ).

The outcomes for the 383 cases that were presented to the district attorney for a charging decision were as follows:

Outcome	N	%
Charges filed	121	31.6
After suspect arrested	(86)	(71.1)
Before suspect arrested	(5)	(4.1)
Same day as suspect arrested	(7)	(5.8)
Date of arrest unknown	(17)	(14.0)
Date of charging unknown	(6)	(5.0)
Charges declined prior to arrest of suspect	149	38.9
Charges declined after arrest of suspect	113	29.5

As illustrated by the data presented above, the rejection rate (i.e., the percentage of cases referred to the district attorney for a charging decision in which charges were declined) was 68.4%. Of the 154 cases that were presented to the district attorney before an arrest was made,<sup>139</sup> charges were declined in 149 (96.8%) of the cases. Stated another way, only 5 (3.2%) of these cases resulted in the filing of charges and the subsequent issuance of an arrest warrant/arrest.<sup>140</sup>

These data suggest that there is a pre-arrest screening process (154 of the 383 cases that were referred to the district attorney were presented for a charging decision before an arrest was made) and that the outcome in most (96.8%) of these cases was that charges were declined. This is further confirmed by the fact that 148 (99.3%) of the cases in which the district attorney declined to file charges before an arrest was made were then cleared by exceptional means by the LAPD or the LASD (the remaining case was unfounded). There were no cases in which the investigation was continuing.

Considered together, the quantitative and qualitative data suggest that the consequence of pre-arrest charge evaluations is the disposal of cases that are not “slam dunks” and likely to lead to a conviction at trial, many of which involve non-strangers and victims who engaged in risk-taking behavior at the time of the incident and delayed reporting the crime to law enforcement.

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<sup>139</sup> This excludes the 30 cases in which the dates were missing from the case file or the date of arrest and the date of charging were identical.

<sup>140</sup> If we add the 30 cases in which charges were filed but either the dates were unknown or the dates of the arrest and charging were the same to the 154 cases that were presented to the district attorney prior to an arrest and if we assume (which would be an invalid assumption given the missing data on dates) that these were cases in which charges were filed before an arrest was made, there would be 184 cases that were presented to the district attorney before an arrest was made. Of these 184 cases, 35 (19.0%) would be cases in which charges were filed.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.





**CHARLIE BECK**  
Chief of Police

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**ANTONIO R. VILLARAIGOSA**  
Mayor

December 21, 2011

Ms. Cassia Spohn, PhD  
Professor and Director of Graduate Programs  
School of Criminology & Criminal Justice  
Arizona State University  
Cassia.Spohn@asu.edu

Ms. Katharine Tellis, MSW, PhD  
Assistant Professor  
School of Criminal Justice & Criminalistics  
California State University, Los Angeles  
ktellis@calstatela.edu

Dear Ms. Spohn and Ms. Tellis:

The Los Angeles Police Department (Department) has had the opportunity to review your final report, *Policing and Prosecuting Sexual Assault in Los Angeles City and County*, and its findings and recommendations. The Los Angeles Police Department is committed to the proper completion of sexual assault investigations and will continue to conduct comprehensive criminal investigations in order to determine the facts, secure evidence, and present a thorough investigation to the District Attorney's Office for prosecution. We appreciate the opportunity we have had to work with you in the completion of this study as the Department continually seeks opportunities to further improve its work in this important area.

In review of the findings and recommendations of the report, there are a number of areas in which we are in agreement and others in which we believe the outcomes described are the result of other factors not considered or given little weight in your analysis. Similarly, your report contained a number of recommendations that we support while others raise concerns as to their appropriateness and will require further consideration. While our review of the study is not complete, preliminarily we provide the following observations.

### Case Attrition – Lower Arrest Rate

In summary, we agree with your finding that the strongest predictors of the likelihood of arrest are variables related to the strength of evidence in the case. Our review of the underlying victim and suspect profiles of our respective case histories found substantial differences that presented our investigators with more difficult investigations in identifying suspects responsible for the sexual assault and/or formulating sufficient evidence to successfully prosecute. Additionally, it is unclear what impact the sample technique used in our cases and not with the Los Angeles County Sheriff's Department data had on the analysis, or any differences in case intake (decision to initiate a crime report in place of another type of report). We do not interpret our current practices involving the Federal Bureau of Investigation (FBI) Uniform Crime Reporting (UCR) Clearance Guidelines as being responsible for a lower arrest rate than our counterpart, the Los Angeles County Sheriff's Department. Additionally, we believe further study is warranted in understanding additional characteristics of the victim and suspect populations captured in this study.

### Need for Additional Specialized Training

The study was very helpful in gathering the viewpoint of the actual investigators assigned sexual assault cases in our Department. Their candid remarks clearly identified the need for additional specialized training for our personnel to ensure they possess the requisite skills and confidence in completing these often complex cases. The Department benefited early on with feedback regarding the content of these surveys and has already implemented a weeklong training course for all sexual assault investigators citywide. Additionally, we have implemented quarterly meetings with our sexual assault investigation supervisors to reinforce important concepts including victim management and effective investigative strategies.

### Federal Bureau of Investigation Uniform Crime Reporting Clearance Guidelines

The study focused very extensively on the Department's interpretation of the UCR Clearance Guidelines asserting that we inappropriately use Exceptional Clearances in two instances; (1) following an arrest of a suspect in which there is a decision by the prosecutor not to file charges and, (2) following the presentation of a case to a prosecutor where the identity and whereabouts of the suspect responsible for the sexual assault is known; however, the prosecutor declines to file charges before the court for a variety of circumstances and we do not make a physical arrest. We are engaged in conversations with senior representatives of the FBI UCR program regarding the stated findings of your report as to our interpretation to determine what changes are appropriate. The Department believes our existing practices, at a minimum involving those individuals that have been physically arrested and no charges were resultantly filed with the court, should continue to be reflected as exceptionally cleared. However, we do not agree with the assertions of the study that our existing practices are responsible for the lower rate of arrests in comparison to our counter-part, the Los Angeles Sheriff Department.

We have provided a more detailed account of the underlying population differences in the study as well as feedback to the policy implications offered in your study as an attachment to this correspondence. Again, it has been our pleasure working with you during the course of this study. The Department will continue to interpret your findings and strive to make any modifications necessary to ensure our investigations are reflective of the high standards of this organization.

Should you need additional information regarding this correspondence, please do not hesitate to contact Deputy Chief Kirk Albanese, Detective Bureau, at (213) 486-7000.

Very truly yours,

A handwritten signature in black ink, appearing to read 'C. Beck', written in a cursive style.

CHARLIE BECK  
Chief of Police

Attachment

## **LOS ANGELES POLICE DEPARTMENT RESPONSE “POLICING AND PROSECUTING SEXUAL ASSAULT IN LOS ANGELES CITY AND COUNTY”**

The research conducted by Ms. Katharine Tellis, PhD, California State University, Los Angeles, and Ms. Cassia Spohn, PhD, Arizona State University, focused on the attrition factors of reported sexual assault crimes through the criminal justice process.

### **CASE ATTRITION AND THE STAGES OF THE CRIMINAL JUSTICE PROCESS WHERE ATTRITION IS MOST LIKELY TO OCCUR**

#### Most probable victim

The study identifies the most probable victim as: Latina, mid-twenties, had been drinking or drunk, ingestion of illegal drugs was low, as was the presence of mental health issues. The study blended the victims’ characteristics of the two jurisdictions, Los Angeles Police Department (LAPD) and the Los Angeles Sheriff Department (LASD), into one monolithic homogenous victim profile.

#### Differences in victim and suspect characteristics between agencies

The study data clearly illustrates significant differences in victim characteristics between the two jurisdictions. These differences have a direct influence on case attrition as they are credibility and solvability factors of an investigation.

The cases studied revealed that:

- LAPD victims were three times more likely to have a criminal record than the LASD victims. This was expressed as a percentage of 12.4% to 3.2% respectively<sup>1</sup>.
- The existence of gang affiliation was five times more likely in the LAPD cases in comparison to LASD. This was expressed as a percentage of 3.9% to 0.7 % respectively.
- The LAPD victims were almost one quarter more likely to have been drinking in comparison to LASD. This was expressed as a percentage of 29.3% to 23.8% respectively.
- The LAPD victims were nearly one half more likely to have been drunk than LASD victims. This was expressed as a percentage of 24.1% to 16.3% respectively.
- The LAPD victims were one half more likely to have been passed out (not drugged) than the LASD victims. This was expressed as a percentage of 15.0% to 10.5% respectively.
- The LAPD victims were three times as likely to have been walking alone at night, and twice as likely to have accepted a ride from a stranger than LASD. These were expressed as a percentage of 10.9% to 3.4% for walking alone and 8.9% to 3.4% for acceptance of a ride from a stranger.

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<sup>1</sup> Page 42, Victims Characteristics. Table III.2

- The LAPD victims were almost one half more likely to have mental health issues than LASD victims. This was expressed as a percentage of 12.6% to 8.1% respectively.
- The LAPD victims are four and one half times more likely than LASD victims to be a sex worker. This was expressed as a percentage of 7.8% to 1.7% respectively.
- The LAPD victims were almost twice as likely to give inconsistent statements to police. This was expressed as a percentage of 20.0% to 11.8% respectively.
- The LAPD victims were one third more likely to have not physically or verbally resisted the attack. This was expressed as a percentage of 27.3% to 19.8% respectively.

The research also yielded significant differences in category of cooperation with law enforcement.

- The LAPD victims were one and one half times less likely to have identified the suspect by full name and address. This was expressed as a percentage of 39.8% to 59.8% respectively.
- The LAPD victims were almost four-fifths less likely to have cooperated during the investigation. This was expressed as a percentage of 56.3% to 72.5% respectively.
- The LAPD victims were almost twice more likely to recant the allegations than the LASD victims. This was expressed as a percentage of 9.4% to 5.1% respectively.
- The LAPD victims were two and one half times more likely to have moved residency after the assault than LASD victims. This was expressed as a percentage of 15.8% to 6.1% respectively.

There were other significant differences in the case profile<sup>2</sup>.

- The LAPD cases were twice more likely to be stranger rapes than LASD cases. This was expressed as a percentage of 41.0% to 21.4% respectively.
- In the LAPD cases, victims were one third less likely to be able to identify the suspect than the LASD victims. This was expressed as a percentage of 60.3% to 84.9%.

These significant differences in victim characteristics between the two populations are not accounted for in the differences of the attrition rate of cases in the two agencies. The study is devoid of any socioeconomic overlay data, i.e. census tract information of the resident population. The further refinement of the victim profile could shed insight on potential mechanisms for prevention as well as prosecution. Perhaps future research could further refine the victim characteristics. All of these factors have significant impact on sexual assault case attrition.

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<sup>2</sup> Page 45, Case Characteristics, Table III

### Impact of presence of Sexual Assault Examination (SART) case attrition

- Of most importance, just over half of the LAPD cases and slightly less than half of the LASD cases had a SART forensic examination completed. This was expressed as a percentage of 53.5% to 49.8% respectively.

The existence of a SART forensic examination can be the single most probative factor, particularly in stranger cases for the recovery of genetic material. It is also probative and corroborative of injuries consistent with the use of force. This is crucial in acquaintance rapes as it is forensic evidence of injuries consistent with lack of consent that is pivotal in a decision to file charges.

### **POLICY IMPLICATIONS FOR THE LAPD AND LASD**

- Regardless of victim age or relationship to the suspect, a professional law enforcement response to sexual assault requires specialized units that are important to Department leadership and staffed with detectives and supervisors who want to work these types of cases. ***The Department agrees.***
- Ongoing, specialized training is critical in, at the minimum, interviewing victims, interrogating suspects, and the penal code. ***The Department agrees.***
- Non-stranger sexual assault is the most frequent type of case seen by law enforcement, and therefore training must specifically address investigation of this type of case. ***The Department agrees.***
- Both patrol officers and detectives require specialized sexual assault training because a poorly written report, inability to build rapport with victims to gather information, and failing to ask appropriate questions often create the inconsistencies that damage the victim's credibility and contribute to case attrition. ***The Department is in agreement and has ongoing efforts to continuously improve the quality of investigations and interaction with victims. For instance, all Department sexual assault detectives are currently undergoing a five day sexual assault investigators course to enhance their knowledge and skills of sexual assault investigations.***
- Emphasize in training that delayed reporting is the norm in these cases, rather than anomalous. ***The timeliness of the report of rape is a circumstance in the investigation that cannot be disputed. Ongoing training and a thorough investigation can mitigate this circumstance and thus increase the chance for the filing of charges.***

- All investigation and evidence collection-related training activities should always have at least one nonstranger example for every stranger example, and should reiterate that the armed stranger jumping from the bushes—while an important public safety issue to address—is not the norm. ***The Department agrees.***
- Incorporate active learning exercises specific to California case law in patrol and detective training in sex crimes to increase familiarity with and preparation for trial-related issues and how they are resolved. ***The Department agrees and this training is currently underway.***
- Suspects must be interviewed *in person*. If a suspect is interviewed by phone it should be *in service of a thorough investigation*, i.e. to bypass Miranda. ***In general, suspects are interviewed in person and at a Department facility however, each case is evaluated on its own merit and investigative strategy is determined on a case by case basis. Therefore, there may be some instances when a suspect is interviewed telephonically.***
- Record all interviews. ***The assumption is a reference to suspect interviews. This is certainly the ideal, though not always practical. The importance of the practice is emphasized in Department training.***
- To be effective, law enforcement must engage the victim as an ally in the investigation. ***The Department agrees.***
- A pretext phone call is much more likely to be successful if the victim and detective are "partners" in the process, but there must be additional investigative strategies to rely upon other than the pretext call. Social networking websites, cell phone messages, and the Internet were repeatedly cited as salient in non-stranger cases in terms of potential evidence. ***The Department agrees.***
- DNA evidence is less relevant—but not irrelevant—to the consent defense. LAPD, LASD, and LADA personnel provided inconsistent statements as to the salience of DNA in non-stranger cases. Department leadership should provide clarification for detectives and prosecutors in this regard, and identify evidentiary priorities beyond the pretext phone call to be emphasized in training to investigate non-stranger cases given that the presence of DNA does not negate a consent defense. ***The existence of DNA evidence is always relevant. The existence of DNA evidence in cases where consent is the fact in dispute relegates that evidence to low probative value.***
- Assuming a thorough investigation, if probable cause to arrest the suspect exists and if the victim is willing to cooperate, an arrest should be made. ***The Department's sexual assault detectives make the decision to arrest on a case by case basis and it's reviewed by a supervisor. This decision is based on the totality of the investigative findings and must reflect prudent investigative strategy and adherence to the law.***

Cases cleared by exceptional means by definition do not involve cases that result in an arrest and should occur less frequently than cases cleared by arrest. ***The Department is in discussion with senior representatives with the FBI UCR section to determine what***

***revisions are necessary by the Department in place of an expansion of their current interpretation to accept this classification.***

- A deputy district attorney's declination for insufficient evidence cannot be cleared by exceptional means if the detective has probable cause to make an arrest but chooses instead to present the case without making the arrest; it must be kept open. ***The Department is in discussion with senior representatives with the FBI UCR section to determine what revisions are necessary by the Department recognizing investigations can NOT be presented to the court for prosecution in the State of California absent a criminal filing by the prosecutor.***

In cases in which probable cause exists (and in which the victim is willing to cooperate), the police generally should make an arrest and clear the case by arrest. ***As stated previously, the decision to arrest is made on a case by case basis. The decision to arrest must be left with the concerned detective with review by the chain of command.***

- Whether a suspect is arrested should not be contingent on whether the prosecuting attorney believes that the evidence meets a standard of proof beyond a reasonable doubt and that the case therefore would result in a jury conviction. Doing so subjects the decision to arrest to a higher standard of proof than is required by law and effectively gives the prosecutor control over the decision to arrest. It also means that individuals who may have committed a serious crime are not held accountable for their behavior and denies justice to victims who made a difficult decision to report the crime and are willing to cooperate with the police and prosecutor as the case moves forward. ***The Department's decision to arrest is made independent of the DA's office, however; the Department recognizes its responsibility to work cooperatively with the assigned deputy district attorney.***
- Failure to make an arrest in spite of probable cause to do so is reminiscent of police inaction in response to domestic violence prior to the implementation of mandatory arrest policies. Although we are not suggesting that police should adopt mandatory arrest policies for sexual assault cases, they should make an arrest when there is sufficient evidence that a crime occurred and that the suspect is the person who committed the crime. ***The Department generally agrees that an arrest should be pursued when there is sufficient evidence that a crime occurred. However, the complexities and nuances of sexual assault investigations dictate that the decision to arrest is made on a case by case basis with proper supervision.***



- Clearly, there are cases where the police cannot—indeed should not—make an arrest. If probable cause to arrest does not exist or if the prosecutor rejects the case for further investigation as a result of a pre-arrest screening process, the case should be left open and investigated further. ***The Department disputes the existence of a pre-arrest screening policy by the district attorney. The decision to arrest or not arrest is made by the assigned detective and is based on the circumstances of the case. A premature decision to arrest sets in motion legal procedural mandates that require adherence for the suspects' constitutional rights. The formal dismissal of charges can be a grave error for a prosecution. The release of a suspect pending further investigation also impales a greater threshold of representation by legal counsel that can impair investigative efforts.***

These cases *should not* be cleared by exceptional means, as they do not meet the UCR criterion that there must be "enough information to support an arrest, charge, and turning over to the court for prosecution." The case cannot be solved—that is, cleared—if probable cause to make an arrest does not exist. ***As stated before, the Department is conducting an internal review of our exceptional clearance practices.***

- There should be a change in policy to be consistent with the UCR so that felony cases are cleared by arrest upon the arrest of at least one suspect, and detectives' arrest decisions are less influenced by their perceptions of prosecutorial inaction. The flipside of recognizing that a probable cause arrest is an appropriate clearance that considers a crime "solved" for police purposes, is to address the widespread practice that, with the exception of a victim's refusal to cooperate, (which this study underscores is significantly affected by the tone set by the police) a DA reject for insufficient evidence cannot be cleared exceptionally due to the stated lack of probable cause. The case must be kept open, or, if probable cause exists, then an arrest should be made. ***The Department disagrees with these assertions and is working with senior representatives with the FBI UCR section to determine what revisions are necessary by the Department or the UCR guidelines themselves. The Department is concerned over the practice of 'clearing' a case upon an arrest without regard to whether there is sufficient evidence beyond probable cause to demonstrate the individual arrested was responsible for the crime.***
- The LAPD should develop a manual specific to investigating sex crimes that codifies the policies and expectations of detectives (similar to LASD's Special Victims Manual, but including the dynamics specific to teenager and adult victims). ***The Department is exploring this recommendation.***
- Rather than handling only cases involving victims under the age of eighteen, LASD's Special Victims Bureau should assume responsibility for the investigation of all sexual assault cases. The majority of LASD detectives requested this and the DDA interviewees overwhelmingly reiterated that Special Victims Bureau detectives are the best equipped to investigate sexual assault.
- Unless all sex crimes detectives and supervisors utilize an "Innocent until proven guilty" approach to victims, the net effect of non-crime reports is to unfound a case without having to do so officially via UCR reporting. This is particularly relevant for the LASD to consider

given their five-year unfound rate was 1.1 percent. The Department's unfound rate from 2005-2009 was 10.9 percent, which is consistent with the national average.

- Classifying and clearing crime reports is a highly discretionary decision. If law enforcement personnel with a "guilty until proven innocent" attitude toward rape victims determine whether sexual assault cases will be classified as crimes and investigated, it is unlikely that a non-crime report will be reclassified into a crime report.

It is important to understand that non-crime reports do not need to be cleared for the purposes of UCR reporting, and several different law enforcement officials from both LAPD and LASD described the use of non-crime reports as "fighting crime with an eraser."

***The Department exercises concerted effort to report and document sexual assaults; the clear implication is the Department is suppressing the reporting of rape which is not the case. The Department has an undetermined sexual assault report when the corpus delicti of the crime cannot be determined. These reports require a follow-up report within thirty days and supervisor review. The reports are then subject to audit to determine if the appropriate classification was used.***



*Erroy D. Baca, Sheriff*

*County of Los Angeles*  
**Sheriff's Department Headquarters**

*4700 Ramona Boulevard  
Monterey Park, California 91754-2169*



December 21, 2011

Ms. Cassis Spohn, PhD  
Professor and Director of Graduate Programs  
School of Criminology and Criminal Justice  
Arizona State University

Ms. Katharine Tellis, MSW, PhD  
Assistant Professor  
School of Criminal Justice and Criminalists  
California State University, Los Angeles

Dear Ms. Spohn and Ms. Tellis:

The Los Angeles County Sheriff's Department (LASD) participated in a collaborative study with the Los Angeles Police Department (LAPD) and the Los Angeles County District Attorney's Office on sexual assault case attrition in the criminal justice system. The focus was on Sexual Assault Case Processing in Los Angeles County. This study was funded by the National Institute of Justice, Office of Justice Programs (NIJ,OJP.) The NIJ was very interested in police and prosecutorial decision-making as it pertained to sexual assault cases.

The Los Angeles County Sheriff's Department has agreed to provide a written response to this study after a critical review of your final report. This response will focus primarily on sections of the report specific to LASD personnel, the overall findings, conclusions, and policy implications of the study.

This study brought to light a myriad of concerns and issues regarding the sexual investigative practices of the LASD and the LAPD, and the sexual assault filing protocols of the D.A.'s Office in Los Angeles County. This study identified numerous factors that contributed to the increase of case attrition in sexual assault cases. Although not in complete agreement with those findings and recommendations, the LASD recognizes the opportunity to take corrective action where appropriate and to consider some of the recommendations as they apply to the LASD.

*A Tradition of Service Since 1850*

The findings of this study revealed that the investigative practices of the LASD investigators had greatly contributed to sexual assault attrition, which artificially depressed the Department's official arrest rate when detectives inappropriately overused the exceptional clearance. This practice apparently produced misleading results and led to inaccurate conclusions about our detectives' investigative function. We acknowledged this and these factors were immediately addressed and have been corrected, while other factors are being addressed for corrective action.

The conclusions reached in this study, as it pertains only to the LASD investigative and filing practices, was a fair assessment - but not in complete agreement - of those factors that contributed to sexual assault attrition. The report also suggested that LASD detectives failed to adhere to and follow the Federal Bureau of Investigation Uniform Crime Reporting (FBI UCR) guidelines, which resulted in grossly inaccurate data. However, the researchers also noted that the *UCR* did not precisely define what was meant by "*reasons outside the control of law enforcement that prevent arresting, charging, and prosecuting the suspect.*" To complicate matters, it was revealed that "*there is no objective indicator in the case file of whether the detective had probable cause to make an arrest.*" Since it could not be determined why a detective took the course of action that he/she did, is it then a fair assessment to be critical, in general, of a detective's investigative practice when the *UCR* guidelines, as mentioned, are open to interpretation. Therefore, a detective will use what he/she believes to be the best course of action, given the uniqueness and complexity of a sexual assault case. To have this kind of relationship between these factors, determining which is the cause and which is the effect appears to be difficult.

The study suggested that there are other factors that contributed to sexual assault attrition which should never occur. They do exist unfortunately for a variety of reasons. In a large law enforcement agency such as the LASD, providing timely and appropriate training to inexperienced sexual assault detectives is often challenging, due to the unavailability of instructors (subject matter experts), schedule conflicts, staffing needs, and budgetary issues, to list a few examples. The LASD continuously evaluates the training needs of its personnel and provides them with the most current training available.

A concern of this study may not necessarily be too few sampling of sexual assault victims (only seven), but in the fact that ten victims who were unknown to police as rape victims were included in this study. Perhaps, this limited a fair representativeness. Also, it does not allow valid generalizations to the population from which the sampling came. Officers/deputies who had contact with these victims should have been interviewed to obtain their version of that specific encounter, which may have put the victim's experience in its proper contexts and perspective.

The leadership of the Sheriff's Department recognizes the important contribution of this study toward identifying the cause-and-effect relationships of those factors which contributed to sexual assault attrition by our deputies. The LASD has always provided the people of Los Angeles County with professional service and treatment as stated in the LASD Core Values. To suggest otherwise is truly a lack of understanding of the underlining factors which are not always apparent in a study, even when a mixed methods design is used to capture the best of both quantitative and qualitative approaches. The LASD traditionally corrects verified deficiencies that affect the quality of service to victims of all crimes. To that end, the LASD has made some operational changes to the adult sexual assault investigative process based on the findings of the study.

- An Adult Rape Investigation Pilot Program has been implemented with selected sexual assault investigators, who have received appropriate training to ensure that these complex cases are investigated by dedicated and well trained individuals who have a passion for these types of cases.
- The Los Angeles Regional Crimes Information Systems (LARCIS) Case Closure Reference Guide was modified to reflect existing business practices, a Newsletter on Detective Bureau Case and Suspect Closure Codes was drafted and is intended to clarify the terminology involved in case closures, etc, and a Field Operations Directive on Standardized Procedures for Detectives Unit Operations was drafted to establish standards and procedures regarding training, case management, documentation, and annual inspections for detective units.
- Updated sexual assault training material on interview techniques (victim/suspect) and report writing will be available to all investigators. This material is intended to mirror the philosophy of the LASD Core Values.

We have provided a more detailed response to the findings, conclusions, and recommendations of this study. This critical review of these factors, which contributed to sexual assault attrition, are revealed in the Overuse of the Exceptional Clearance section, Correlates of Case Outcomes section, Interviews of LASD detectives section, and Interview with Victims section. Please refer to attachment of this correspondence.

I wish to express our pleasure in participating in this study and working with you for the past two years. The LASD will use the findings of this study to continuously evaluate and enhance our investigative function to better serve the people of Los Angeles County under our policing jurisdiction.

Sexual Assault Study 2010

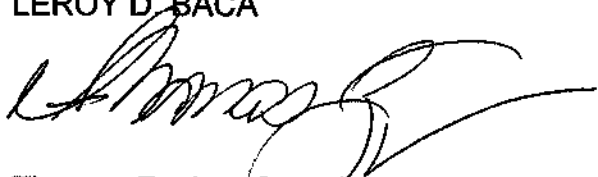
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December 22, 2011

Should you require additional information regarding the contents of this correspondence, please contact Detective Division, Chief William J. McSweeney at (323) 526-5755 or Captain Thomas Zuniga at (562) 946-7901.

Sincerely,

LEROY D. BACA

A handwritten signature in black ink, appearing to read 'Thomas Zuniga', with a large, sweeping flourish extending to the right.

Thomas Zuniga, Captain  
Special Victims Bureau

## **LOS ANGELES COUNTY SHERIFF'S DEPARTMENT RESPONSE TO THE NATIONAL INSTITUTE OF JUSTICE STUDY: SEXUAL ASSAULT CASE PROCESSING IN LOS ANGELES COUNTY**

### **LASD RESPONSE TO THE SEXUAL ASSAULT ATTRITION STUDY**

- The scope of this study documents a variety of factors (variables) which contravene the UCR Handbook (2004) guidelines. The researchers were also very critical of the handbook's antiquated definition of forcible rape and its impact on the FBI's Uniform Crime Reporting program in terms of Part I definition of rape and case clearance. The FBI just recently broadened the Part I definition of rape and is in the review stages of approval.

### **RESPONSE**

The broadened definition (*cover any penetration that is genital, oral or anal, regardless of whether the victims and the offenders are male or female*) provides clarity. The factors which contravene the UCR guidelines are explained below.

- This study identified the relationships and differences of all agencies, and the cause and effects of the factors that contributed to the increase of sexual assault attrition. One example, according to the researchers, is the "pre-arrest screening" process which is a standard operating procedure in sexual assault cases for detectives, which according to the study, affects their decision to arrest or not to arrest the suspect even though they have probable cause to arrest. The interviews of the LASD detectives regarding this issue to arrest or not arrest is determined apparently by the detective's experience and not necessarily what the law requires one to do. Another rationale, as stated by a LASD detective: "...if the suspect is no longer a threat to the victim" then the arrest is delayed. This is [apparently] a common practice in non-stranger cases. The conclusion reached suggest that the "detective's decision-making is influenced by their perceptions of whether charges will be filed, and prosecutorial decision-making is influenced by the context in which the police present their case." This process appears to be informally "institutionalized" [term used by researchers] between both law enforcement agencies and the district attorney's office.

### **RESPONSE**

Credibility is a key factor to a successful or failed prosecution. Each sexual assault allegation warrants a thorough and intensive investigation before the case is presented to the district attorney for filing consideration to at least adhere to the legal presumption of innocence and avoid irreparable harm to the accused. The investigation of this crime is demanding because of the discretion and tact that the detective must use. The allegation of sexual assault - especially in non-stranger cases - is often difficult to substantiate or disprove, and therefore, the

**detective has a special responsibility to protect the reputations of innocent subjects of such charges.**

**The “pre-arrest screening” process, more accurately stated, the “pre-filing process” utilized by our sexual assault detectives should be used with ethical intent, and not used to circumvent the investigative process by not conducting a complete and thorough investigation, which may include arresting the suspect when probable cause exists. In other words, the detective is taking problematic cases to the district attorney if the detective is not following the protocol established under UCR guidelines.**

**Personal reasons for not arresting a suspect when probable exist for filing consideration is an unacceptable practice. However, there are exceptions to using this type of process and it should always be justified, such as gathering more evidence to build a stronger case and/or to include additional charges. If the suspect is a danger to the community, the suspect shall always be arrested. The “pre-filing” process used by our detectives can serve as a valuable conduit to receiving valuable advice, guidance, and opinion about a case before making an arrest.**

**What the study revealed was that LASD detectives, after using this “pre-arrest screening” process, had inappropriately cleared out these cases which contributed to a high rate of case attrition in sexual assault cases. This “pre-arrest screening” process is used as follows: 1) Prior to making an arrest. 2) The victim is interviewed by the district attorney before charges are filed. The exception, if the victim is assaulted by a stranger and the suspect has been arrested. 3) The district attorney’s de facto corroboration requirement, which precludes the filing of charges based solely on the victim’s testimony.**

**An inquiry of the case closure data revealed that LASD detectives had been inappropriately clearing out sexual assault cases, which contributed to the misuse of the exceptional clearance. It was also learned that “unfound” case closures were extremely low at 1.1%. LAPD was at 10.9%. The report revealed valid reasons why this had occurred: the detectives’ justification could not be substantiated upon reviewing the data. This was immediately corrected by revising the LARCIS Case Closure Reference Guide, the development and implementation of a Newsletter on Detective Bureau Case and Suspect Closure Codes, and a Field Operations Directive on Standardized Procedures for Detectives Unit Operations.**

- In evaluating exceptional clearances, the study revealed that both law enforcement agencies misused the exceptional clearance, and that the LASD overused exceptional clearances (which combines cases cleared by arrest and cases cleared by exceptional means), which are misleading. This is a systemic**



practice that exists among LASD detectives. This occurred after the detective had presented a case to the district attorney. Thus, they cleared sexual assault cases by exceptional means inappropriately in a substantial number of cases. Simply, the detectives are not following Department policy which is consistent with the UCR guidelines. The result, one fourth of LASD cases were cleared by exceptional means which did not meet the criteria per the UCR Handbook (page 119).

### **RESPONSE**

Upon closer examination of this practice by detectives investigating sexual assault cases, it was revealed that the detectives were incorrectly clearing cases which explained why the Department's clearance rates were not the same as the national rate. In addition, the LARCIS Case Closure Reference Guide was outdated, and that there were no written guidelines for detectives to refer to for clearing cases.

This problem was immediately corrected. Personnel from Data Systems, Advisory Committee on Detective Bureau Standards, Field Operations Support Services, and Special Victims Bureau, contributed to the development and implementation of a Newsletter, a Field Operations Directive and the revision of the LARCIS Case Closure Reference Guide. Detectives will also be receiving training on case closure criteria, which coincides with the new material.

- During the face to face interviews, it was the consensus of detectives from both law enforcement agencies and district attorneys that specialized training should be required to work sexual assault cases because of the complexity of the investigations. It was also expressed that only a specialized unit should work these cases. The LASD detectives were asked by the researchers how to improve the quality of sexual assault investigations and prosecutions. Detectives said that strong interview skills are needed when investigating these cases. With the proper training, detectives learn how to adjust interview techniques which enhances the investigation and the amount of information obtained from victims, witnesses, and suspects. The common response was to have the Special Victims Bureau investigate all sexual assault cases. It was said of the Special Victims Bureau that they are the **"gold standard"** for sexual assault investigations in contrast to the station level where detectives receive very limited training specific to sexual assault, and they investigate whatever type of crime is sent their way."

### **RESPONSE**

At the direction of the Sheriff, the Department is implementing an Adult Rape Investigation Pilot Program, which will consist of six station detectives from nine Sheriff's stations from all three Field Operations Regions. The Special Victims Bureau (SVB) is tasked with the coordination and oversight of this pilot program. Each region will have a POD of three stations and dedicated sexual assault detectives. Each POD will have two (2) station detectives worth of work. The detectives assigned to each POD will be the sole investigators of adult rape

cases occurring in their POD's jurisdiction. The detectives will remain assigned to the stations who donated them. The adult rapes will be their primary investigative responsibility. These detectives will receive training which is consistent with the training received by SVB detectives. At the end of six months, the Sheriff will receive an assessment of the pilot program.

- The detectives' investigative approach on "he said/she said" non-stranger sexual assault cases, and on "Guilty until proven innocent" instead of "Innocent until proven guilty," were viewed as "it was important to the detective to assess the victim's credibility before taking action on the suspect." Detectives provided mixed responses on these issues. What is critical is the way in which information is obtained from the victim so that it does not further complicate what is already a difficult case to prosecute. Law enforcement and prosecutors ask different types of questions of victims, so reports based on "interviews may appear to be inconsistent, but in reality it is an artifact of questioning," as pointed out by a district attorney.

### **RESPONSE**

Detectives and patrol deputies who interview sexual assault victims shall always be guided by the Department's Core Values. The statement, *I commit myself to honorably perform my duties with respect for the dignity of all people*, shall always be remembered by patrol deputies and detectives who are involved in an investigation of sexual assault. Victims, in particular a victim who has been sexually assaulted by a non-stranger or stranger, shall always be treated with the upmost respect. The credibility of a victim is crucial to any case.

As revealed in the study, there are many reasons, motivations, and circumstances for which a victim lies in a non-stranger sexual assault incident. But that does not change the fact that it is a person who we are talking to in a professional capacity. How the facts are obtained from the victim, and the accuracy of that the information, is vital to the prosecution's case, or in just learning the truth about the incident. Building a rapport with a victim often yields cooperation and credibility.

Unfortunately, training on report writing or interviewing of sexual assault victims is not always available to our deputies to improve their skills, which was expressed by many detectives who were interviewed in this study. To address this concern, the Special Victims Bureau is in the developmental planning stages of creating a pamphlet on report writing and on techniques for interviewing sexual assault victims. This pamphlet will be designed specifically for patrol deputies as first responders to a sexual assault call.

- A total of seventeen female adult survivors (victims) were interviewed for this study. They were selected from a rape treatment center, domestic abuse center,

and a trauma center. The victims shared their experience with regards to their decision to report to law enforcement, and their overall impressions of the criminal justice system.

Seven sexual assault victims (3 from strangers and 4 from acquaintances) reported the incident to law enforcement. The other ten survivors were victims of stalking, domestic violence, and criminal threats. These ten victims later indicated that they had been sexually assaulted but they did not say anything to law enforcement at the time of the call because "they did not know it was a crime" that had been committed. They gave a variety reasons why they did not report the rape to the police. Only one of the ten victims' rape incident was reported by a victim's doctor.

The survivors said they had both a negative and positive experience with the patrol officer/deputy and/or the detective during the entire investigative process: They said some officers/deputies lacked people skills, they had an attitude toward them instead of the suspect, their credibility and believability were questioned, they were accused of lying, some were told that in a "he said/she said" incident, it was impossible to prosecute, and that they lacked sensitivity. Some victims said the officers and/or detectives were helpful or very nice.

The survivors expressed frustration, confusion, and intimidation of the criminal justice system. At times, they felt more like a suspect than a victim. Despite their horrific experience of being sexually assaulted most said that they would advise future victims of sexual assault to report the incident to the police.

The survivors were asked to give their opinion on how to improve the criminal justice response to sexual assault. They provided a variety of responses such as, the police should not pressure a victim during the interview, treat a victim like a victim and not like a suspect, have a female officer do the interview, and the police should be more compassionate.

## **RESPONSE**

Based on the seven victims' recollection of their negative experience with law enforcement right after their sexual assault incident, there is no doubt that *these* victims had, to various degrees, a negative experience with law enforcement and also with the district attorneys during the investigative process. It is not indicated however, how many of the seventeen victims encountered the negative experience with the LASD, or their connection to any of the reports that were reviewed as part of this study. This information is important to have in order to intelligently respond to good data.

The criminal justice system can be abstract for most people who are not familiar with this system. The only perspective that most people have of the criminal justice system is based on movies and TV programs. Their first experience of this system as a sexual assault victim is traumatic since it does not resemble what is

shown on TV. This system can seem cold and uncaring. However, this does not excuse the lack of professionalism on the part of deputies in exercising their duties - even if it's only one victim who encountered a bad experience. As mentioned earlier, our deputies' behavior shall always be guided by the Department's Core Values.

This was a very small sampling of sexual assault victims who were interviewed for this study - only seven were interviewed for this report out of hundreds of sexual assault victims interviewed by LASD personnel. The other ten survivors were victims of other crimes, including sexual assault "rape", but the rape was not revealed to the officers, but their statements were weighted equally to the known sexual assault victims. They described their incident (sexual assault or crime) and their experience during the investigative process. They were also asked: "How to Improve the Criminal Justice Response to Sexual Assaults."

Some of these victims had mostly negative comments about their experience with the criminal justice process, which includes the preliminary investigation by the patrol deputy/officer, follow up investigation by the detective, and the interview with the district attorney. A few had some positive comments about their experience. This study includes data of sexual assault minors (12-years old to under 18-years old), but it does not include interviews of those victims, parents or legal guardians as to their opinions about the investigative process.

The comments from the ten victims who did not initially report their rape to the police are highly prejudicial, they are baseless, and they are uncharacteristic of how LASD patrol deputies and detectives routinely conduct sexual assault investigations.

The apparent weakness in this portion of the study may not necessarily be too few sampling of sexual assault victims (only seven), but in the fact that ten victims, who were unknown to police as rape victims, were included in this study. Perhaps, this limits a fair representativeness. Also, it does not allow valid generalizations to the population from which the sampling came. In addition, officers/deputies who had contact with all of these victims should have been interviewed as well in order to get their version of that encounter, which may put it in its proper context and perspective.

To address the above concerns of the victims who were interviewed, the Special Victims Bureau will be developing a plan of action that allows for all station detectives to receive similar training consistent with detectives assigned to Special Victims Bureau and detectives assigned to the Adult Rape Investigation Pilot Program. The training includes: recognizing the impact of trauma and how this affects the victim's behavior, interview techniques, report writing for detectives, as well as a section on the Department's Core Values.

**EXECUTIVE SUMMARY:**  
**LADA RESPONSE TO NIJ STUDY**  
**POLICING AND PROCESSING SEXUAL ASSAULT**  
**IN LOS ANGELES CITY AND COUNTY**

**PROSECUTORS – LAWYERS FOR THE PEOPLE**

**The prosecutor speaks not solely for the victim, or the police, or those who support them, but for all the People. That body of ‘The People’ includes the defendant and his family and those who care about him. It also includes the vast majority of citizens who know nothing about a particular case, but who give over to the prosecutor the authority to seek a just result in their name.**

(Carol Corrigan, Current Supreme Court Justice, On Prosecutorial Ethics (1986) 13 Hastings Const.L.Q. 537, 538–539, cited in *People v. Dehle*, 166 Cal.App.4th at p. 1388)

The National Institute of Justice Report, “Policing and Processing Sexual Assault in Los Angeles City and County,” contains a number of “Conclusions and Policy Recommendations” including “Policy Implications for the LA County DA’s office.” Among the recommendations, is that the Los Angeles County District Attorney’s office should, “remove any double standard in sexual assault prosecutions of nonstrangers that results in enhanced scrutiny of rape victims relative to other crime victims” because “[c]ontinued enforcement of extra-statutory requirements in sexual assault cases renders rape law reforms such as elimination of resistance and corroboration requirements impotent and denies justice to rape victims.” It also suggests that our office, “should file charges in more cases that meet the legal elements of the crime and the victim is cooperative.”

The perspective, conclusions and policy recommendations are inconsistent with American constitutional principles of justice, due process protections and the ethical obligations of prosecutors. The report, at least the portion dealing with the roles and responsibilities of prosecutors, also appears to be inconsistent with National Institute of Justice (NIJ) research mission to create a more effective and fair justice system.

Initially the District Attorney’s Office embraced the opportunity of collaboration with Cassia Spohn, Ph.D. and Katharine Tellis, MSW, Ph.D., on this project. We

contributed significant resources to the effort and made our case files available for review and our personnel available for interviews and consultation at all stages of the process. Unfortunately, this report reflects that the authors failed to develop an understanding of the criminal justice system in Los Angeles County. This lack of understanding is evident through-out the report. This failure to accurately describe the prosecutor's role in the criminal justice system is, at least in part, based upon faulty analysis of the data collected which is compounded by biased interpretation of the data. The final result is so flawed that it gives us cause to regret the decision to participate in the study.

The mission of the Los Angeles County District Attorney's Office is to successfully prosecute criminal offenses in a fair and accurate manner according to the law and maintaining the highest standards of ethical behavior and professionalism while accomplishing our core mission. Members of the Los Angeles County District Attorney's Office with significant experience in the prosecution of sexual assault cases, prosecutorial ethics, victims' rights and forensic science have met with Dr. Spohn and Dr. Tellis on more than one occasion and expressed serious concerns about factual inaccuracies in the study. Evidence was provided that many of the premises held by the researchers were false and thus, their conclusions were incorrect.

The conclusions reached in this report regarding the role of the prosecution ignore the real world needs of victims, community expectations of fairness and the ethical obligations of criminal justice professionals. Instead, the authors substitute an agenda which views every accused as guilty until proven innocent. In fact, the researchers consistently and stunningly expressed the position that *proof beyond a reasonable doubt* was too high a case filing standard and recommended that cases be filed to meet only the standard of proof required to survive a preliminary hearing.

To adopt many of the recommendations of this project would be imprudent, unethical, unprofessional and harmful to the public confidence in the fairness of the criminal justice system. This approach would also be harmful to victims in the long term. The authors of the project are recommending that the District Attorney's Office file sexual assault charges based on the expressed desire of the victim alone to proceed with a prosecution where a crime report has been prepared alleging sufficient factors to meet the elements of the offense without the need for corroborating evidence and preferably without a pre-filing interview with the victim and law enforcement. If a pre-filing interview is to be employed as a regular part of the filing evaluation process, the authors caution that the interviews avoid "inconsistent and invalid information being obtained from the victims." As prosecutors, we are committed to the pursuit of the truth and cannot proceed with diligence to meet our duties if we are constrained by the fear that we might discover evidence contrary to that which is presently known to us.

Prosecutors further understand the need to interview the victim prior to filing a case in order to evaluate credibility, ability and willingness to testify, and capacity to withstand cross-examination. The carte blanche validation of the desire of a victim to file a case as recommended by the authors is inherently contrary to the interests of justice and potentially detrimental to the best interests of the victim.

The reality of the court process - including required rules of evidence, beyond a reasonable doubt standard of proof, constitutional principles and mandated jury instructions - would actually increase the likelihood of a not guilty verdict should the practices recommended by the authors be adopted. An acquittal would empower the alleged sexual predator to falsely claim innocence and label the victim as a liar. Public confidence in the criminal justice system would be negatively impacted. This in turn would predictably have a chilling effect on the willingness of future victims to report sex crimes and prosecute perpetrators.

This study is fundamentally flawed and inaccurate in its depiction of the employees, policies and practices of the Los Angeles County District Attorney's Office. The fair and impartial administration of justice is the historical foundation of the Los Angeles County District Attorney's Office. We take that responsibility very seriously.

**LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE**  
**RESPONSE TO NIJ STUDY**

*The mission of the Los Angeles County District Attorney's Office is to successfully prosecute public offenses and investigate criminal activity, in a fair and compassionate matter, to support the public's right to a safe and just society. Every employee plays a vital role in the achievement of that mission. Each deputy district attorney as a representative of the District Attorney's Office is expected to exhibit the highest standards of ethical behavior and professionalism. The Rules of Professional Conduct as published by the Board of Governors of the State Bar of California and as approved by the California Supreme Court applies to all deputy district attorneys. (Los Angeles County District Attorney's Office, Personnel Policies Handbook 2003)*

The recommendations made by the authors of this report as applied to the prosecution of sexual assault cases in Los Angeles County fly in the face of the ethical and constitutional duties of a prosecutor. They are troubling for several important reasons. The institution of a bare minimum filing standard would be directly contrary to the ethical restraints placed upon prosecutors by both statutory and decisional law. Moreover, the "double standard" applied to sex crimes cases as distinguished from non-sex crimes cases alluded to by the authors describes a phenomena without support in the limited data they collected and examined as part of their study.

A recommendation for removal of any double standards in sexual assault prosecutions of nonstrangers that result in greater scrutiny of rape victims relative to other crime victims would be relevant, helpful, and justified **if** evidence showed a double standard was being applied. It would be warranted, for example, if different standards were being applied to victims of non-sex crimes in which the suspect was a nonstranger. The data collected by the authors failed to establish that this dichotomy in case evaluation actually occurs. The study data was restricted to sexual assault crimes. The study did not collect and examine data from law enforcement or the District Attorney's Office on nonsexual crimes involving nonstrangers or other suspects. There was in fact no comparative analysis conducted of any quantitative or qualitative data on how prosecutors evaluated evidence and the credibility of teen and adult victims when such victims reported non-sex crimes against nonstrangers.

The authors' claim of an illusory double standard and imposition of extra statutory requirements in the prosecutorial evaluation of the victims of sex crimes appears to assume that if corroborating evidence or evidence of resistance is not an element of a rape, it becomes irrelevant. Such a position overlooks that



witness assessment and evaluation of witness credibility are not extra statutory requirements in sexual assault cases any more than in any other types of cases.

Weighing the strength and weaknesses of witness testimony and other evidence that is part of the totality of circumstances surrounding a crime is an integral part of the decision-making activity of the trier of fact, whether it be a court or a jury. This process is authorized by statute. Evidence Code Section 312 subsection (b), for example, states that "the jury is to determine the effect and value of the evidence addressed to it, including the credibility of witnesses."

Evidence that supports or corroborates a sexual assault victim's version of an assault by a nonstranger remains a factor to be considered in assessing the proof supporting a victim's credibility even though it is not an element of the crime of rape. This does not distinguish sexual assault victims from other victims of crimes in which the suspects were nonstrangers. Corroborating evidence is always relevant and would be considered relevant in a case involving the victim of a robbery, fraud, or other crime in which the suspect was a nonstranger. This is because cases involving nonstrangers often involve issues that are absent when the victim and suspect are strangers.

California Evidence Code Section 780 permits the court or jury in assessing witness credibility in all cases to consider, respectively, a witness's "capacity to perceive, to recollect or to communicate any matter about which he testifies," whether the witness has "a bias, interest, or other motive," and a prior statement by the witness "that is [consistent or] inconsistent with any part of his testimony." Cases involving nonstrangers typically raise issues and potential defenses of bias, interest, or other motive that are not raised when the parties are strangers. Similarly, cases involving high-risk behavior such as drinking alcohol or ingesting narcotics raise issues and the prospect of defense attacks on a witness's ability to perceive and recollect that may be absent when risky behavior is not involved.

Prosecutorial ethics demand that the prosecution's assessment of witness credibility and evidence extend beyond the evidence offered by or in support of the victim. It must also include an assessment of the evidence likely to be introduced by the defense. This is why the author's recommendation that prosecutors file charges in more cases that merely meet the legal elements of the crime and the victim is cooperative falls short of the legal ethics and fair play expected of prosecutors in the criminal justice system.

The prosecutor is required to objectively and fairly examine not only the evidence that points to guilt but the evidence that points to innocence or supports a verdict of not guilty. It is the duty of a prosecutor to seek both truth and justice. Foreseeable plausible and reasonable defenses cannot simply be ignored at the charge evaluation stage in a nonstranger sexual assault case any more than in any other case. The fact that the complainant and the suspect know one another does

not alter this standard. To recommend prosecutors file charges when the legal elements are met and the victim is cooperative without consideration of any other circumstances or evidence distorts the role of the prosecutor.

The role of the District Attorney is defined as "the representative, not of an ordinary party to a controversy, but of sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that the guilty shall not escape nor the innocent suffer. He may prosecute with earnestness and vigor - indeed, he should do so. But, while he may strike hard blows, he is not a liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." (*Berger v. United States* (1935) 295 U.S. 78, 88 [55 S.Ct. 629; 79 L.Ed. 1314]) For the prosecution to ignore plausible and reasonable defenses at the time of charge evaluation would be a rejection of the professional role and ethical obligations of prosecutors and the application of a lesser filing standard to sexual assault cases.

Further, a prosecutor is described in *Pearson v. Reed*, (1935) 6 Cal.App.2<sup>nd</sup> 277, 286 as "called upon to determine, upon evidence submitted to him, whether a criminal offense has been committed by the person accused - exactly the same question that is presented to a court or jury upon trial. His decision is no less judicial in character if it be erroneous or swayed by prejudice or malice. It does not matter whether the evidence before him be much or little or whether he hears all or only some of it. His authority to investigate the facts before acting is unlimited and the matter rests in his own discretion. He is a quasi-judicial officer and he is also an executive officer."

To completely understand the deficiencies in the proposal for this new standard for case filings contained in this study, a foundational understanding of the role of the District Attorney in California is required. Here, the public prosecutor is charged with initiating and conducting "all prosecutions for public offenses." (Gov. Code, § 26500.) He or she fulfills that role, subject to the supervision of the Attorney General. (Cal. Const. art. V, § 13; Gov. Code, § 12550.) "[T]herefore, the district attorney of each county independently exercises all the executive branch's discretionary powers in the initiation and conduct of criminal proceedings." (*People v. Dehle* (2008) 166 Cal.App.4th 1380, 1387.)

As a result of this authority, the District Attorney "has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek." (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 451.) As such, a victim, no matter how wronged, has no legal authority in California to initiate criminal proceedings. California law has emphasized that this prosecutorial discretion must "be exercised "with the highest degree of integrity and impartiality..."

(*People v. Eubanks* (1996) 14 Cal.4th 580, 589.) This is because the prosecutor represents all of the Peoples' interest, including society as whole and, those of both the victim and defendant. (*People v. Dehle, supra*, 166 Cal.App.4th at p. 1388.)

This duty of impartiality is not, of course; meant to imply that prosecutors should not be zealous in their pursuit of those who violate the law. As the Supreme Court has observed if a prosecutor is, "honestly convinced of the defendant's guilt [he or she]...is free, indeed obliged, to be deeply interested in urging that view by any fair means." (*People v. Eubanks, supra*, 14 Cal.4th at p. 590.)

How then to balance the duty of zealous enforcement with impartiality? One means is by the establishment of legal standards to be met before criminal proceedings are initiated. The Los Angeles County District Attorney, through its Legal Policies Manual, sets forth such a standard for the filing of criminal charges in *all cases*. It is important to note that there is only one filing standard and not a multiplicity of criteria based on the nature of the charges. *All cases*, not just sexual assaults, are evaluated under the same rubric, which is:

A deputy may file criminal charges only if the following four requirements are satisfied:

- There is *legally sufficient, admissible evidence* of all of the elements of the crime(s) to be charged;
- There is legally sufficient, admissible evidence of the accused's identity as the perpetrator of the crime(s) to be charged;
- The deputy, based on a complete investigation and a *thorough consideration of all pertinent facts readily available*, is satisfied the evidence proves the accused is guilty of the crime(s) to be charged; and
- The deputy has determined that the *admissible evidence is of such convincing force that it would warrant conviction of the crime(s) charged by a reasonable and objective fact finder after hearing all the evidence available to the deputy at the time of charging and after considering the most plausible, reasonably foreseeable defense(s) inherent in the prosecution's evidence*.

(Los Angeles County District Attorney Legal Policies Manual, § 2.01.01 (2005), *emphasis added*.)

The filing standard contained in the Legal Policies Manual reflects an understanding that while all the legal elements of a crime might be present that does not mean that the evidence necessary to support those elements in court would be admissible. For example, consider the sexual assault of a six-year old where the prosecutor has a well founded belief that the child would not be able to testify. Or consider the case where a defendant's statement is the key to a successful prosecution, but would be legally inadmissible because of a *Miranda*

violation. The "Policy Implication" included in the draft report suggests that charges be filed merely "where the legal elements" are met and the "victim is cooperative." Adoption of a policy that allowed charges to be filed merely "where the legal elements" are met and the "victim is cooperative" would seriously undermine a prosecutor's ethical obligation to be impartial. To file charges when a prosecutor knows they cannot be proven, but the legal elements are present, would also force the victim as well as the suspect to confront the expense and vagaries of the judicial system without a valid legal purpose. (*People v. Dehle*, *supra*, 166 Cal.App.4th at p. 1388.)

The Legal Policies Manual of the District Attorney's Office prohibits the filing of charges in *any case*, no matter what the underlying charge, unless the filing deputy has made "a thorough consideration of all pertinent facts readily available" that might corroborate the case presented for filing. Corroboration, after all, merely means to "to make more certain; confirm." (Dictionary.com) A prosecutor who files charges which are unsupported violates his or her ethical responsibility to be "an administrator of justice..." (American Bar Association Criminal Justice Standards -- Prosecution, Standard 3-1.2(b) (1992); Standard 3-3.9(a) ["A prosecutor should not institute, cause to be instituted, or permit the continued pendency of criminal charges *in the absence of sufficient evidence to support a conviction.*"].)

LADA's corroboration component in **all** cases is further supported by the requirement that the admissible evidence be of such convincing force that it would lead a reasonable jury to convict. This standard does much to counteract the recent criticism that prosecutors have been overzealous in their desire to convict, especially as a result of insufficient investigations. (See generally, Ridolfi & Possley, *Preventable Error: A Report on Prosecutorial Misconduct in California 1997-2009*, Northern California Innocence Project, Santa Clara University School of Law; *California Commission on the Fair Administration of Justice Final Report* (2008).) To adopt a filing standard that abandons corroboration risks both ethical violations and an erosion of public confidence in the District Attorney.

Finally, the "Policy Implication" recommending the filing of charges where merely the legal elements and victim cooperation are present appears to urge adoption of a probable cause filing standard. That is the lowest of legal standards and has been defined "to be such a state of facts as would lead a man of ordinary care and prudence to believe and conscientiously entertain an honest and *strong suspicion* that the person is guilty of a crime." (*People v. Ingle* (1960) 53 Cal.2d 407, 412, emphasis added.) The filing of weak cases erodes the prosecutor's responsibility to ensure that necessary resources are not dissipated in futile efforts. (*Taliaferro v. Locke* (1960) 182 Cal.App.2d 752, 755-756; *Gananian v. Wagstaffe* (2011) 199 Cal.App.4th 1532, 1546.)

LADA's policy of requiring corroboration and a reasonable doubt evaluation process is in compliance with the 1935 United States Supreme Court's often quoted observation that prosecutors are "the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is *not that it shall win a case, but that justice shall be done.* (*Berger v. United States* (1935) 295 U.S. 78, 88 [55 S.Ct. 629; 79 L.Ed. 1314], emphasis added.)

### **"PRE-ARREST SCREENING": A GOAL-ORIENTED TERM USED TO DESCRIBE A PROCEDURE UNKNOWN TO PROSECUTORS**

The authors of this report propose changes to the prosecution's charge evaluation process to increase the number of sexual assault cases filed. But an examination of their proposal reveals it is incompatible with the ethical imperatives that govern prosecutorial filing decisions. This becomes apparent from a brief review of their discussion of the impact of prosecutorial decision-making at the charge evaluation stage and their recommendations for change.

The study alleges that our prosecutors utilize what the authors refer to as a "pre-arrest screening process" to evaluate out-of-custody cases. According to the authors, "pre-arrest screening" is further defined as a process "in which law enforcement officers bring a case to the district attorney prior to making an arrest, and when the district attorney determines that the evidence does not meet the standard of proof beyond a reasonable doubt, the case is (typically) cleared by exceptional means by law enforcement." (Final Report at page 416). It should be noted that this is a term coined by the study's authors and is not one used or recognized by our office. Moreover, prosecutors do not participate in the case clearance process and case clearance rates are not a factor in case filing decisions made by prosecutors in our office.

According to the authors, the "pre-arrest screening process" is an "informal norm" (Final Report at page 417) that sometimes promotes a thorough law enforcement investigation, but "more often becomes an avenue through which: (1) detectives bring cases to the district attorney with an expectation that the district attorney will decline to file charges. The pre-arrest screening of nonstranger sexual assault cases at the district attorney's office is posited as a critical factor behind case attrition that is reinforced by the pre-filing victim interview and corroboration expected before charges are filed."

The authors propose that prosecutors reduce case attrition by, among other things, filing more in-custody and out-of-custody cases where merely the legal elements are met and the victim is cooperative. In essence, the study calls for the prosecution to file cases based upon a probable cause standard. Law enforcement

is also urged to arrest suspects and submit for charge evaluation more sexual assault cases where the legal elements are met and the victim is cooperative.

The authors explain that by presenting cases for charge evaluation before a suspect is arrested, and basing decisions to arrest on whether the prosecution will file a case, law enforcement moves from a probable cause to a proof beyond a reasonable doubt standard for arrest. According to the authors, this results in a high rejection rate at the charge evaluation stage that reflects prosecutors' views that cases do not meet the standard of proof beyond a reasonable doubt.

The authors assume that more arrests will follow from adherence to a lower standard at the charge evaluation stage. Inexplicably, the authors recognize that prosecutors have an ethical duty to file charges only in cases where there is a reasonable probability of conviction, but at the same time they urge the prosecution to lower its filing standard to help ensure arrests occur whenever merely the legal elements are met and the victim is cooperative. The conclusion to be deduced from this contradiction is that the authors consider arrests in sexual assault cases an important end in and of itself. Indeed, they assert that arrests should not depend on whether a case satisfies the standard for a jury conviction. They point out that arrests help to ensure a criminal history of the suspect is established. Further, felony arrests result in the recovery and entry of the suspect's DNA into the state's DNA database. In contrast, failure to arrest after prosecutors reject a case for failing to meet their higher standard of proof means suspects "are not held accountable" and "denies justice to victims who made a difficult choice to report." This latter point overlooks that even were a lower standard to be improperly and unethically adopted at the filing stage, the filing of weaker cases would reduce the likelihood that suspects would be held accountable at each level of the court process requiring the testing of evidence, all of which involve a standard for proof that is higher than probable cause.

### **STUDY RECOMMENDATION: A TAG AND RELEASE PROGRAM**

While the authors may take exception to law enforcement's preference for pre-arrest charge evaluations, they fail to recognize and acknowledge that prosecutors are governed by a different code of conduct. The ethical obligations of prosecutors demand that they refrain from the filing of weak cases that lack a reasonable probability of conviction. Prosecutors may not file cases merely to ensure that a suspect is arrested, a criminal history is established for the suspect, or that a DNA sample is obtained from the suspect. We have professional and constitutional obligations to all victims of crime. While we are called to advocate zealously in the pursuit of a just result, we must do so without undue emotion or bias. We have a duty to the fair and impartial administration of justice. Sometimes suspects are wrongly accused and prosecutors must never lose sight of that possibility even while we vigorously advocate for the victims in our cases.

Adoption of lower filing standards and doing away with the pre-filing interviews of victims, would result in the filing of weak cases that lacked the evidence to meet the standard of proof beyond a reasonable doubt at trial which is codified in Section 1096 of the California Penal Code. Filing weak sexual assault cases on the word of the victim alone without evaluating the credibility of the victim or the ability of the victim to testify might grant a victim an immediate measure of relief and a feeling of validation, but these emotions would be fleeting. The filing of weaker cases would reduce the likelihood that suspects would be held accountable at trial where the standard for conviction was substantially higher. The reality of the court process and procedures would likely result in an acquittal in a rape case. This result would empower the sexual predator to assert a claim as "wrongly accused", which would ultimately deny the victim justice and threaten the safety of the general public.

In the recently decided case of *Friedman v. Roucher*, 9<sup>th</sup> Cir. 2009) 580 F.3d 847, the court again emphasized the ethical and constitutional responsibilities of law enforcement agencies and prosecutors. "The Nevada authorities extracted the DNA from the Friedman not because they suspected he had committed a crime, nor to aid in his reintegration into society, nor as a matter of his continuing supervision. Their purpose was simply to gather human tissue for a law enforcement databank, an objective that does not cleanse an otherwise unconstitutional search. The warrantless, suspicionless, forcible extraction of a DNA sample from a private citizen violates the Fourth Amendment. The actions of the officers were not justified under the "special needs" exception, reliance on an extraterritorial statute, or on general Fourth Amendment principles. The search and seizure of Friedman's DNA violated the Constitution."

### **THE BENEFITS OF A PRE-FILING INTERVIEW IN SEXUAL ASSAULT CASES**

The Los Angeles County District Attorney's Office recognizes that sex crimes have a devastating effect on the victim. Victims of sex crimes often suffer severe trauma, both physical and emotional. Because of the sensitive nature of sex crimes, the Los Angeles District Attorney's Office has made it our policy to ensure that a specially trained prosecutor is assigned to each sexual assault case.

When law enforcement presents a sex crimes case to the District Attorney's Office for filing consideration – whether the suspect is in or out of custody at the time of the filing review - a sex crimes' prosecutor will conduct a thorough review of the evidence before making a final decision. It is the policy of the District Attorney's Office to include an interview with the victim as part of the review process whenever possible. The prosecutor who initially interviews the victim will vertically prosecute the case through conclusion whenever possible. This interview is referred to as a pre-filing interview.

The first law enforcement interview with the victim is usually conducted by a first-responder. This initial interview is then followed by a more detailed interview conducted by a detective; hopefully, a detective with training and experience in investigating sexual assault cases. The preferred practice is that the prosecutor's interview will take place when the detective conducts his/her initial interview. Due to limited resources and time constraints, this is often not a feasible option. Therefore, the victim interview conducted by the prosecutor most often occurs after the initial detective interview. It often occurs at a local office of the District Attorney and is scheduled at the victim's convenience. As provided by statute, the victim is offered the opportunity to have a victim advocate and/or support person of their choosing present for the interview. If the victim is not comfortable being interviewed in English, an interpreter is provided. The victim is also given an opportunity to speak with a representative of the Victim Witness Assistance Program (VWAP) and is encouraged to sign up for services such as counseling, reimbursement for medical bills, and other support services that are available at little or no cost to the victim.

The pre-filing interview is an integral part of the successful prosecution of a sex crimes case. There are benefits to both the prosecutor and the victim that flow from it. One of the most important benefits of the pre-filing interview is the opportunity for the assigned prosecutor to develop a rapport with the victim from the beginning of the process. Many times, victims are wary of how they may be treated through the legal process and thus hesitant to cooperate. The pre-filing interview allows a prosecutor the opportunity to explain the legal process to the victim and ensure that the needs and concerns of the victim will be addressed. A victim's willingness and ability to testify and withstand cross-examination is critically important to a successful prosecution. A victim's mental and emotional preparation and cooperation throughout the legal process often begins with the pre-filing interview.

Another important benefit of the pre-filing interview is the ability to elicit further information. The trauma sex crimes victims suffer can impact their ability to recount and communicate the details of the assault, especially when first reported to the police. A pre-filing interview allows the victim to thoroughly discuss the case with a prosecutor who is familiar with and sensitive to the circumstances involved in a sexual assault. This process will often lead to the victim revealing more sexual acts than were originally reported to the police. The number and manner of unlawful touchings and/or sex acts committed determines the number and type of fileable charges and greatly impacts the potential sentence for the defendant.

Additionally, the pre-filing interview allows the prosecutor an opportunity to specifically elicit from the victim corroborative evidence of the sexual assault. There are many forms of corroboration that may be uncovered during the pre-filing interview; for example fresh complaint witnesses that the victim confided in after the assault, the victim's notations in a diary recording impressions of the



assault, actions the victim has taken since the crime that demonstrate resulting trauma, or the existence of other victims.

The pre-filing interview can also explore additional ways to build more evidence in the case. A further path of investigation could include the possibility of a pretext phone call or conversation between the victim and the suspect, designed to elicit truthful and open admissions relating to the charge(s) being evaluated. This investigative path is often only feasible if there has not yet been an arrest made in the case. An arrest alerts the suspect that an investigation into the case has commenced and that the suspect is the focus of the investigation. Therefore, a pre-filing interview with the victim in an out of custody case is productive even in situations where the available written reports and other evidence may appear to initially indicate that there is insufficient evidence for a filing.

The Los Angeles District Attorney's Office will file a case only if there is sufficient admissible evidence that the case can be proved beyond a reasonable doubt. Therefore, after careful review of all the evidence, a pre-filing interview with the victim, and verification that all possible lines of investigation have been pursued, the prosecutor may still determine that there is not enough evidence to file criminal charges. If the decision is to decline the case, the pre-filing interview still accounts for an exceptional experience with the victim. The interviewing prosecutor, at that moment, has an opportunity to explain the specific reasons for the declination to the victim. The victim has the opportunity to ask questions or relay their opinions directly to the prosecutor. The pre-filing interview gives victims the satisfaction of knowing that they were heard and the facts of the case were thoroughly considered.

Additionally, the victim is told that the act of reporting the sexual assault has value as evidence because it has memorialized the suspect's actions for future use either as corroboration for another case against the same suspect or for filing of the current offense should additional evidence be developed. For example, if a new victim of the same suspect is discovered, the current victim's charges can be reviewed and filed along with the new victim, making both charges much stronger and allowing for a longer sentence if the suspect is convicted. Filing a weak case, rather than being in the interest of justice, presents the very reasonable risk that a jury would acquit the suspect; thus forever barring any future prosecution of those charges and undermining the pursuit of justice.

The filing of a criminal case can be a very stressful and traumatic process for a victim of a sexual offense. The victim must testify in an open court about a very traumatic and often embarrassing event. The victim will be subjected to rigorous and often humiliating cross-examination and often have photos of their intimate body parts shown to complete strangers. During a pre-filing interview, the victim can express a strong opposition to testifying in court about the sexual offense. Without the testimony from the victim a conviction is unlikely – often impossible. California laws prohibit a victim of a sex crime from being forced to testify, thus

the prosecutor is unable to file criminal charges<sup>1</sup>. The pre-filing interview, however, gives the prosecutor the opportunity to educate the victim about the process and encourage the victim to consider cooperating in the prosecution of the case. The rapport built between the victim and prosecutor at the pre-filing interview can encourage the victim to cooperate in a criminal case. It also tends to solidify the victim's continued cooperation throughout the criminal process. Nevertheless, after the pre-filing interview, the victim may still decide to not participate in the criminal process. If this is the case, the connection the victim made with the assigned prosecutor and the services obtained through VWAP that were offered at the pre-filing interview can assist in giving the victim the strength and motivation to cooperate with a criminal prosecution in the future and begin the healing process.

The Los Angeles County District Attorney's policy to conduct pre-filing interviews is consistent with our mission to make a complete and thorough review of sex crimes investigations being presented for filing consideration. The pre-filing interview also assures that sex crimes victims are treated with respect and compassion. It also allows victims to feel validated and maintain the courage necessary to be a part of the prosecution of the case. Further, by establishing a rapport with the victim, additional evidence may come to light, the victim is more likely to cooperate, and the prosecution's case will become more effective and successful. The victims also have the opportunity to meet with a Victim Service Representative (VSR) who can assist them with obtaining services; this is an opportunity to become involved with support services of which they might not have been aware until the interview occurred.

Prior to a deputy district attorney being assigned to prosecute cases involving sex crimes, deputies must complete a training course concerning the filing, preparation, and presentation of sexual assault cases. Prosecutors learn about the complex laws in this specialized legal field as well as the scientific, medical, and psychological aspects of these cases. Lectures on interviewing victims and witnesses are also provided to sex crimes prosecutors by recognized experts, including: Thomas D. Lyon, Professor of Law and Psychology, University of Southern California, Gould School of Law and Catherine S. Connell, MSW, Federal Bureau of Investigation, Child/Adolescent Interview Specialist. These experts also provide consultation to sex crimes prosecutors on an individual basis.

In addition, the prosecutors who specialize in sex crimes prosecutions have strong working relationships with their allied agencies. These prosecutors work closely with the Sexual Assault Response Teams (SART members), which include nurses, advocates, forensic interviewers, and law enforcement. We recognize that multi-discipline involvement in a sexual assault case is beneficial and work closely with local facilities that have been established where multiple agencies can participate in the investigation with congruity (see Attachment on Multi-

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<sup>1</sup> Code of Civil Procedure section 1219

Disciplinary Centers). Most common are sexual assault center treatment facilities where children are taken for interviewing and medical exams. At these facilities, prosecutors can observe interviews with the children and participate if necessary. This eliminates the need to re-interview the victim multiple times. The Los Angeles District Attorney's Office is a proponent of this practice for children and adults of sexual assault crimes. For example, prosecutors are assigned to Stuart House, a forensic center for children who are victims of sexual and physical abuse.

If possible, deputy district attorneys may accompany law enforcement to hospitals or meet at a multi-disciplinary facility to conduct a joint interview. As previously referenced, this is a resource intensive practice and not often practicable due to the high volume of crimes and the limited number of available staff. As a result, most interviews are conducted in the District Attorney's Office at an office location and time convenient to the victim. As part of a pilot project, a 'roll-out' program is being utilized in two Branch offices – Torrance and Compton. These pilot programs involve a sex crimes prosecutor being "on call" on a daily basis during office hours. If a sex crime occurs during this time frame, a deputy will be assigned to report to the victim's current location to be present for and assist in the victim interview. This same prosecutor will vertically prosecute the case to its conclusion. The investigation is significantly enhanced by joining the deputy district attorney with the investigating detective from the outset. The victim has to submit to fewer interviews, additional witnesses are immediately located and interviewed, victim services are immediately provided, one comprehensive report is generated and the initial interview is more likely to reveal relevant and essential circumstances of the offense.

Although one interview with the victim by multiple agencies is the preferred practice, there is no measurable detriment to the victim or the case ascribed to the Los Angeles County District Attorney's Office's policy to conduct pre-filing interviews even when the interviews are conducted separately. A fair survey of victims interviewed would show that they are treated with respect and are satisfied with their experience with the assigned prosecutor. Further, having the district attorney interview the victim before the case is filed eliminates the need for the prosecutor's detailed victim interview before the first court hearing. As documented above, it is better to fully understand the available evidence before the case is filed.

Also, the fear of creating inconsistent statements due to multiple interviews should not be the controlling factor. When victims are interviewed multiple times, the history may become more detailed and facts may first appear to be inconsistent with the initial report. Nevertheless, to the trained ear and taken in context, the complete account is usually consistent with the initial report. However, if the interview brings forth facts that appear to be truly inconsistent with the initial report, it is better to be able to discuss the confusion before the

case is filed or presented in court. The prosecutor's interview addresses and discusses what may first appear to be inconsistencies.

If the victim interview reveals significant and relevant factual inconsistencies, the evidence that can reasonably be expected to be introduced in court creates reasonable doubt as to the guilt of the suspect and the case should be declined for filing. Sex crimes prosecutors are experienced and knowledgeable regarding the rules of evidence, trained to know the elements of the relevant crimes, and are bound by their ethical duty to proceed only on cases in which the admissible evidence is of such convincing force that it would warrant conviction of the crime(s) charged by a reasonable and objective fact finder after hearing all the evidence available to the deputy at the time of charging and after considering the most plausible, reasonably foreseeable defense(s) inherent in the prosecution's evidence.

### **VICTIM SERVICE REPRESENTATIVES (VSRs) ASSIST VICTIMS DURING THE PRE-FILING INTERVIEW**

When victims attend a pre-filing interview, they meet the VSR assigned to the office in which the interview is being conducted. The VSR often sits in during the interview to support the victim. Although victims have often been given information about services offered by the Victim Witness Assistance Program (VWAP) either by law enforcement or at the hospital, often the victim has not yet had a chance to read or digest what services are available. The VSR explains what services VWAP offers and can assist the victim completing a California Victim Compensation Program (Cal VCP) application. This is a critical service because Cal VCP has fairly strict guidelines on when an application must be made and if made too late, the application will generally be denied. The application should be made and the victim given a claim number even if the victim does not intend to go to counseling or participate in the prosecution of the case. If the victim's application is approved and the victim later decides to go to counseling, the charges for services will often be reimbursed; if the victim waits to apply, the application may be denied because it was filed too late.

When the VSR meets with the victim, the victim's needs are assessed, including whether the victim needs to be relocated, needs a protective order or has any other emergency needs. Through contact with a VSR, the victim is more likely to develop rapport with the members of the prosecutorial team. The VSR can serve as a trusted liaison between the victim and the prosecution when it comes time for the victim to come to court and testify. Because a victim of sexual assault can refuse to testify, maintaining the cooperation of the victim in a sexual assault case is more critical than in many other kinds of criminal cases. For example, a victim who has access to counseling services may often feel strong enough to withstand the rigors of having to testify, thereby assisting the prosecution's case and the pursuit of justice for the victim.

The Victim Witness Assistance Program assigns advocates to courthouses throughout the county to assess and deliver designated victim services. VSRs represent the multi-cultural, diverse population of the county and have undergone special training to effectively assess the service needs of victims and make appropriate referrals to other service providers for continuing services. VSRs also have specialized training to assist the elderly, children, survivors of sexual assault or domestic violence and those who have been victimized by gang violence. VSRs are available who speak Spanish, Cantonese, Korean, Japanese, Russian, Tagalog and Armenian.

For the past three years, the District Attorney's Office has hosted a full-day Victims' Rights Symposium. Participants have included experts in the fields of crisis counseling, legal support, victim advocacy, the media, the court system, law enforcement, restitution, threat assessment and cultural sensitivity (see Attachments).

### **THE VICTIM-WITNESS ASSISTANCE PROGRAM – SERVICES PROVIDED TO ALL VICTIMS OF CRIME**

**Victims' rights are to be honored and protected by law enforcement agencies, prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants.**

**Penal Code §679.**

All victims and witnesses of crime are to be treated with dignity, respect, courtesy and sensitivity. Victims have many rights under the California Constitution, various statutes and also through case law interpreting statutes.

In November, 4, 2008, the electorate passed Marsy's Law which amended the California constitution authorizing seventeen specifically enumerated rights. Some rights are automatically provided; others must be requested. When a case is filed in which there is a victim, our office sends notification to all victims of their rights under Marsy's Law. Our office also has a Marsy's Law database which will notify victims of what has occurred in court if they request the notification.

To ensure that victims' rights are protected and to help victims through the aftermath of crimes of violence, the Victim-Witness Assistance Program provides many services to victims. VWAP assists qualifying victims of crimes of violence or threat of violence with direct victim services and compensation assistance, whether or not a criminal case is filed or a suspect is identified. VSRs work in courthouses and police stations throughout Los Angeles County providing an array of services to help victims become survivors.

The Sex Crimes Division of our office has a VSR on site to assist victims. Each of the eleven Branch courts has at least one VSR assigned to assist victims of

crimes of violence. In addition to working with victims of all crimes of violence, the VSR works closely with VIP (Victim Impact Program) deputies in all sexual assault cases. This enables victims to learn about the services offered by VWAP, including filing an application to California Victim Compensation Program (Cal VCP).

The District Attorney's Office Legal Policy Manual 24.01 requires that victims be referred to VWAP **immediately** upon the filing of all murder and other sensitive cases. Sexual assault cases qualify as "sensitive cases." VSRs are a valuable member of the prosecution team. Timely and on going communications between prosecutors, law enforcement, and VSRs is vital to the pursuit of justice and lessening victims' trauma in all cases.

In cases involving defendants convicted and sentenced to state prison for violent offenses, the victim must be notified within 30 days of the right to certain notices regarding parole, custody release, and escape. Most sexual assault cases are violent offenses. Prosecutors in our office are tasked with advising victims about completing the CDCR 1707 form and filing it with the California Department of Rehabilitation to communicate their notice requests. VSRs are available to advise and assist the victim in filing the CDCR 1707 form.

VSRs assist victims of crimes of violence whether a case is filed or not. In situations where a case is declined for prosecution, victims may still be eligible for VWAP services and can also apply to the California Victim Compensation Program for reimbursement for crime related losses whether or not a suspect is identified or a criminal case is filed.

In 1977, former District Attorney John Van DeKamp established Los Angeles County's Victim-Witness Assistance Program (VWAP) to provide needed services to crime victims and witnesses. "to humanize the criminal justice system and to make the victim whole." Five years later, the State Legislature enacted Penal Code 13835 et seq. which created a funding source from restitution fines collected from criminal defendants to fund VWAP programs in every county of the State. All VWAP programs share a common mandate: to provide comprehensive victim services and advocacy to "reduce the trauma and insensitive treatment of victims and witnesses may experience in the wake of a crime, since all too often citizens who become involved in the criminal justice system, either as victims and witnesses to crime, are further victimized by that system." (PC §13835(a)).

Penal Code Section 13835.5 sets forth mandatory and optional services for victims of crimes of violence. VWAP provides all of the services listed below:

**Crisis Intervention:** VSRs assist victims in funeral and burial arrangements, arranging crime scene clean up, relocation and arranging home security systems.

**Emergency Assistance:** VSRs can access funds to assist with emergency food, housing, clothing, and medical or dental needs.

**Counseling Resources and referrals:** VSRs are familiar with local agencies that provide counseling to victims of crime as well as low cost medical or dental agencies. VSRs make every effort to refer to services that are appropriate for each individual victim based on their language and culture.

**Direct Counseling:** VSRs listen to the victim's concerns relating to the crime and make every effort to assist the victim directly.

**Assistance filing an application with the California Victim Compensation Program (Cal VCP):** VSRs assist victims applying for reimbursement of crime related losses. Victims who have suffered physical or emotional injury or threat of injury during a crime are eligible to apply whether or not a suspect is identified or a criminal case is filed. Cal VCP reimburses up to \$63,000 for crime related losses including mental health counseling, medical and dental expenses, loss of wages or support, funeral/burial expenses, job retraining and rehabilitation, crime scene clean up, relocation and home security.

**Assistance in obtaining the return of property:** Victims have a right to the prompt return of their property when it is no longer needed as evidence. VSRs work with DDAs and law enforcement to ensure that a victim's property is returned to him/her as soon as possible.

**Orientation to the Criminal Justice System:** VSRs explain the criminal justice system to those victims whose cases have been filed and also assist victims working with the police in cases where the case has not been filed.

**Court Escort:** VSRs accompany victims when they go to court and offer support to the victims during court proceedings. Often VSRs sit next to the victim when the victim testifies in court.

**Advising victims of court dates:** Victims have a constitutional right to be advised of all court proceedings. VSRs keep victims informed of court dates and procedures.

**Notification to family, friends or employers:** When requested, VSRs will assist victims in advising family, friends or employers of the crime, the victim's condition and requesting the employer to minimize any loss of pay due to the victim's involvement in the criminal justice system.

**Assistance in obtaining restitution:** VSRs help ensure the victim's constitutional right to restitution is protected by helping the victim organize and account for all crime related bills, etc.

**Witness Protection:** VSRs explain VINE (Victim Inmate and Notification Everyday) [http://www.la-sheriff.org/lasd\\_services/vine.html](http://www.la-sheriff.org/lasd_services/vine.html) and also assist with restraining and protective orders and relocation through Cal VCP.

**Child Care:** VSRs are often called upon to watch children so that the victim can speak to the DDA and/or law enforcement or testify in court when the victim is not able to arrange child care.

**Transportation:** VSRs provide bus tokens and also assist in making arrangements for the victim to attend court proceedings.

**Victim Impact Statement:** Victims have a right to be heard at sentencing. VSRs assist victims in making victim impact statements at the time of sentencing.

### **THE IMPORTANCE OF DNA EVIDENCE IN SEXUAL ASSAULT CRIMES**

The researchers' recommendation that our office provide DNA training creates a false impression that our current training programs are somehow deficient or, even more unfairly, that no training exists. This is a gross mischaracterization of the facts. We wholeheartedly agree that training on the use of DNA evidence is critical. That is why, for well over a decade, the Los Angeles County District Attorney's Office has been the leader in providing top quality training in using DNA evidence effectively in the courtroom to successfully convict serious and violent criminals. Ensuring that our deputies understand this evidence and use it appropriately and effectively has been and continues to be a high priority for the Los Angeles County District Attorney's Office.

Without question, DNA evidence is a powerful ally of the criminal justice system. In addition to obtaining a just conviction of a criminal offender, DNA evidence may exonerate the innocent and solve a decades-old cold case. For over a decade, LADA has been a pioneer in this area, aggressively advocating for the expanded use of DNA technology. Our office co-authored Proposition 69, which led to the creation of the current all-felon DNA Database.<sup>2</sup> District Attorney Steve Cooley also persuaded then-Attorney General Jerry Brown to reverse his position on the use of familial DNA searching to solve crimes. (See Attachment) As a result, our office was the first in the nation to file a serial rape/murder case solved using familial DNA searching technology.

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<sup>2</sup> In footnote 136, the researchers state that the Attorney General's Office was undecided as to whether to appeal *People v. Buzza* (2011) Cal.App.Lexis 1006, which struck down California's law mandating DNA collection from felony arrestees. The Attorney General's Office filed a petition for review from the California Supreme Court on September 7, 2011. The Supreme Court granted review approximately a month later.



This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

However, experienced sexual assault deputies appreciate the limits of proving a case with DNA evidence. As articulated repeatedly by our deputies during the interviews conducted as part of the study, not every sexual assault case with DNA evidence meets the burden of proof ethically required of prosecutors to file a case, nor is every sexual assault case deemed not provable because of the lack of DNA evidence. Rather, every case must be analyzed on the strengths and weaknesses presented by all of the available evidence.

In the most basic sense, DNA evidence can be used to prove sexual contact between the victim and the suspect. If the suspect's DNA is found on the victim's body (or on clothing, bed sheets, etc. ...), the inference can reasonably be drawn that sexual contact between the victim and suspect occurred. If whether or not sexual contact occurred between the victim and suspect is the issue in the case, then the presence of DNA evidence establishing those facts is obviously a crucial piece of evidence. Thus, we look for and utilize DNA evidence most commonly in cases where this issue is present, such as in stranger assault, child molestation, unlawful sexual intercourse or acquaintance cases in which the suspect denies any sexual contact (or admits some contact, such as vaginal intercourse, but denies other acts, such as oral copulation or anal penetration).

However, sexual contact alone is not sufficient to prove a charge of rape or other forcible sex crime involving an adult victim. The sexual contact must also be against the will of the victim.<sup>3</sup> In a non-stranger case where the suspect admits to having sex with the victim, the presence of his DNA does not address the issue of lack of consent or force. In such cases, we must look for other evidence tending to corroborate the victim's account as to this legally required element (such as injuries, use of a weapon, a fresh complaint or prompt reporting to law enforcement). There are many permutations of these basic scenarios and a myriad of other factors that can come into play—delayed reporting, prior consensual sexual activity, use of alcohol/drugs, mental illness. All are relevant in the evaluation of whether or not a case can be proven in court beyond a reasonable doubt. All of the available evidence in a case, including DNA evidence, must be weighed and considered in context when making the decision to file criminal charges.

The researchers have recommended that our office “provide training for deputies ... and sex crimes detectives about examples of sufficient evidence to prosecute in cases where the suspect uses a consent defense. ....” (Study, at p. VIII.) We agree that DNA training for law enforcement and deputy district attorneys is an essential first step to the effective presentation and use of DNA evidence in both stranger and non-stranger sexual assault cases. In fact, the District Attorney's office has provided exactly this type of training for many years. The most recent DNA training program, implemented over two years ago, was created by our

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<sup>3</sup> “Rape is an act of sexual intercourse ... [w]here it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.” (Cal. Pen. Code § 261(a)(2).)

office, in collaboration with the Los Angeles Police Department and the Los Angeles County Sheriff's Department. It is an intensive two-day course, offered monthly, and includes training from experienced deputies as to how to file and effectively present DNA evidence in all cases, including sexual assaults. (See Attachment - DNA Curriculum for December, 2011.) District Attorney Steve Cooley has mandated that every deputy, including supervisors, attend this comprehensive training.

Additionally, for the last 10 years, our office has sponsored the DNA Awareness Forum, an annual event bringing together law enforcement, laboratory personnel, and prosecutors from across the state to discuss cutting-edge legal issues surrounding the forensic use of DNA evidence. (See Attachments - DNA Awareness Forum Agendas for 2007, 2008, 2009, 2010, and 2011)

## ATTACHMENTS

- **LADA NIJ WORKING GROUP BIOS**
- **MULTI-DISCIPLINARY TEAM INTERVIEW CENTERS**
- **VICTIMS' RIGHTS SYMPOSIUM AGENDA – APRIL 2010**
- **VICTIMS' RIGHTS SYMPOSIUM AGENDA – APRIL 2011**
- **LETTER TO ATTORNEY GENERAL BROWN – MAY 2009**
- **DNA TRAINING CURRICULUM 2011**
- **HISTORY OF DNA AWARENESS FORUM – 5<sup>TH</sup> ANNUAL FORUM**
- **DNA AWARENESS FORUM – 2007 PROGRAM SCHEDULE**
- **DNA AWARENESS FORUM – 2008 PROGRAM SCHEDULE**
- **DNA AWARENESS FORUM – 2009 PROGRAM SCHEDULE**
- **DNA AWARENESS FORUM – 2010 PROGRAM SCHEDULE**
- **DNA AWARENESS FORUM – 2011 PROGRAM SCHEDULE**

## PAMELA BOOTH

Ms. Booth is the Bureau Director of Central Operations. She received a Bachelor of Arts (cum laude) from California Polytechnic University, Pomona in Behavioral Sciences and a juris doctorate from Western State University College of Law, Fullerton. She began her career in the Los Angeles County District Attorney's Office in 1985 after having served as a San Bernardino County Probation Officer for six years. As a trial lawyer, Ms. Booth prosecuted a wide variety of serious felony cases involving crimes of violence. She has over 70 jury trials involving charges of sexual assault, domestic violence, kidnapping and murder. Ms. Booth has served as a Deputy-in-Charge the Pomona Juvenile Office (1996 – 1997) and El Monte Area Office (1997 – 1999). She was the Head Deputy of the Sex Crimes Division (1999 – 2001) and the Family Violence Division (2001 – 2006).

Ms. Booth has served as the Co-Chair of the Inter-Agency Council on Child Abuse and Neglect (ICAN) Child Death Review Team for a decade and is a member of the National Center on Child Fatality Review Advisory Board. Formerly, she acted as the Co-Chair of the Los Angeles County Domestic Violence Fatality Review Team and the Chair of the Los Angeles County Domestic Violence Council. Ms. Booth also serves as the Chair of the Los Angeles District Attorney's Office Victim Impact Program (VIP) Advisory Working Group

## CAROL BURKE

Ms. Burke is the Head Deputy of the Forensic Science Division. She received a Bachelor of Arts degree from the University of California, Los Angeles (UCLA) and a juris doctorate from the University of California, Hastings College of the Law. She began her career in the Los Angeles County District Attorney's Office in 1985. Ms. Burke has prosecuted over 60 felony jury trials with charges including kidnapping, rape, child molestation, and special circumstances murder. Ms. Burke has served in a supervisory capacity for 14 years. She has been assigned as the Deputy-in-Charge of the Whittier, West Covina, and Huntington Park Area offices. She has been assigned as the Assistant Head Deputy of the Hardcore Gang Division, Training Division, and the Pomona Branch office. Immediately prior to her current assignment, she was assigned as the Head Deputy of the Community Prosecutions Division.

Ms. Burke is the Chair of the District Attorney's Forensic Science Working Group. She is a member of the Los Angeles County District Attorney's Office DNA Training Team. She is also a member of the LAPD DNA Taskforce and the Countywide Criminal Justice Coordinating Committee DNA Taskforce.

## KATHLEEN CADY

Ms. Cady is the Special Assistant to the Program Director for the Victim-Witness Assistance Program (VWAP). VWAP offers services to victims of violent crime, such as emergency assistance, court accompaniment, and assistance filling out Victim Compensation Program (Cal VCP) applications for reimbursement for crime related losses. She received a Bachelor of Arts degree in Political Science from the University of California, Davis and a juris doctorate from Southwestern University School of Law. She has been a prosecutor since 1989. During her career as a prosecutor, Ms. Cady has specialized in family violence, child abuse, and sexual assault cases. She has conducted over 100 jury trials. Ms. Cady was previously the Victim Impact Program (VIP) Coordinator, supervising a staff of deputy district attorneys who vertically prosecuted cases involving sexual assault of adults, physical and sexual assaults of children, elder abuse, family violence, stalking cases and cases involving hate crimes.

Ms. Cady currently serves on the Board of Directors of the Child Advocacy Center, an agency that assists child victims and witnesses in the east end of Los Angeles County, and the California Network of Child Advocacy Centers (CNCAC) and previously served on the board of Project Sister Family Services, a rape crisis center. She is actively involved in groups that assist victims of trafficking. She is also a member of the California Children's Justice Act Task Force. Ms. Cady serves on the VIP Advisory Working Group. She has lectured extensively to law enforcement, prosecutors, victim advocates and community groups on prosecuting crimes, Victims' Rights, VWAP services, restitution and victims with disabilities.

## MICHELE DANIELS

Ms. Daniels is the Head Deputy of the Family Violence Division of the Los Angeles County District Attorney's Office. She received a Bachelor of Arts degree from Mount Holyoke College and a juris doctorate from the UCLA School of Law. Ms. Daniels' tenure in the office has included service as a Deputy-in-Charge of various area offices, a prosecutor in the Career Criminal Unit and a felony trial lawyer in the Central Division. She has filed and prosecuted crimes ranging from misdemeanors to serious and violent felonies including sexual assaults, domestic violence cases and murders. She has also contributed to previous revisions of the District Attorney's Legal Policies Manual. Ms. Daniels served as Head Deputy of the Sex Crimes Division from 2009-2011. As Head Deputy of the Training Division from 2004-2009, she led the team of attorneys that scheduled classes and developed training curriculum for prosecutors, including an emphasis on legal ethics.

Ms. Daniels chairs the Los Angeles County Domestic Violence Council, the ICAN Operations Committee and the Los Angeles County Domestic Violence

Fatality Review Team. Ms. Daniels is the chair of the National Institute of Justice Study Committee on the VIP Advisory Working Group. She is also a member of the ICAN Child Death Review Team.

#### PATRICIA K. DOYLE

Ms. Doyle is the Head Deputy of the Sex Crimes Division and supervises and advises 25 deputy district attorneys who vertically prosecute sex crimes committed against adults and children. She received a Bachelor of Science degree from the University of Wisconsin and received a juris doctorate from Southwestern University School of Law in Los Angeles. Ms. Doyle joined the District Attorney's Office in April 1981 and has tried approximately 80 felony jury trials, the majority of which involved sex crimes against children and adults. Ms. Doyle was assigned exclusively to Victim Impact Program (VIP) category cases for approximately three years while in the Pasadena Branch Office as a trial deputy in the late 1990's. She was formerly the Head Deputy and Assistant Head Deputy of the Pasadena Branch Office and she also supervised and advised VIP trial attorneys assigned to vertically prosecute sex crimes, elder abuse and family violence cases. Ms. Doyle served as the Special Assistant to District Attorney Steve Cooley for five years from March 2004 to April 2009.

Ms. Doyle is a member of the Los Angeles County District Attorney's Office Forensic Science Working Group and the VIP Advisory Working Group. She participates in the office training of VIP deputies. Ms. Doyle is also working in conjunction with the Los Angeles Innocence Lost Task Force on a program to rescue child prostitutes victimized by adult pimps. The Sex Crimes Division is prosecuting the adult pimps and provides support to the child prostitutes in recognition of their status as victims of crime rather than criminals. Ms. Doyle also regularly participates in quarterly meetings at Stuart House, a multi-disciplinary advocacy center for children who are victims of sexual abuse, which is part of the Rape Treatment Center in Santa Monica.

#### LAURA JANE KESSNER

Ms. Kessner is a Special Assistant for the Bureau of Branch & Area Operations. She received her Bachelor of Arts degree in History from the University of Kentucky and a juris doctorate from Loyola Law School, in Los Angeles. She has been a deputy district attorney for nearly 17 years and has prosecuted a wide variety of felonies including murders, sexual assault, domestic violence and fraud. She prosecuted the death penalty case of the People v. Kenneth Hunt, which was a double homicide of elderly women solved through the use of DNA technology.

Ms. Kessner is a member of the Los Angeles County District Attorney's Office DNA Training Team, Forensic Sciences Working Group, the DNA Discovery Coordination Team and the VIP Advisory Working Group. She is a recognized and respected resource for deputies in the office who are prosecuting DNA cases.

#### ALISANNE SCOLNIK

Ms. Scolnik is the Deputy-in-Charge of the VIP Team in the Van Nuys Branch. She has held this position for over four years. Ms. Scolnik has a Bachelor of Arts degree (cum laude) from California State University and a juris doctorate from the University of California at Davis. Ms. Scolnik's career in the District Attorney's Office began in 1990. In her career she has held many assignments and prosecuted over 50 felony jury trials involving sexual assault, domestic violence, and murder.

Ms. Scolnik is a member of the Los Angeles District Attorney's Office VIP Advisory Working Group and sits on two committees: the National Institute of Justice Committee and the Technology Committee. Ms. Scolnik was also involved in the founding and formation of the first Family Justice Center in Los Angeles County, Valley Cares, and represents the District Attorney's Office on the Valley Cares Executive Board. Ms. Scolnik also provides training on the prosecution of sexual assault and domestic violence to law enforce and local victim advocate groups.

#### LISA DARUTY TANNER

Ms. Tanner has been a trial deputy assigned to the Victim Impact Program (VIP) since 2009. She received a Bachelor of Arts degree (cum laude) from the University of California, Santa Barbara and received her juris doctorate (cum laude) from Pepperdine University. As a member of the VIP Team in the Van Nuys Branch, she vertically prosecutes cases with vulnerable victims of sexual assault, child abuse, elder abuse and domestic violence. Many of her cases involve sexual assaults of children and adults; in addition she has prosecuted numerous domestic violence cases, including murder cases. She joined the District Attorney's Office in May of 1997 and has taken 67 felony cases to trial including murders, kidnappings, sexual assaults, child abuse and domestic violence. She is currently a member of the VIP Advisory Working Group and the VIP Training Committee.



## WILLIAM WOODS

William Woods is the Assistant Head Deputy District Attorney of the Los Angeles County District Attorney's (LADA) Training Division. He received his juris doctorate (cum laude) from Southwestern University School of Law. Prior to joining the Training Division, he served for 13 of his 25 years with LADA in their Appellate Division. During that time he amassed 14 published opinions as counsel of record, including two in the California Supreme Court.

Mr. Woods is the current author of Chapter 2, Professional Responsibility, in California Criminal Law Procedure and Practice. He has been a member of LADA's Professional Responsibility Committee since 2005, and lectures to prosecutors and law enforcement officers across California about ethics issues. He also serves as one of twelve members of the State Bar of California Committee on Professional Responsibility and Conduct.

# DNA AWARENESS 2010

## PROGRAM SCHEDULE

8:30 a.m.	<b>Welcoming Remarks</b>	<b>Lael R. Rubin</b> , Director, Bureau of Prosecution Support Operations Los Angeles County District Attorney's Office
	<b>Opening Remarks</b>	<b>Steve Cooley</b> , District Attorney Los Angeles County
8:45 a.m.	<b>The Alcalá Serial Killer Case: The DNA Difference</b>	<b>Matthew Murphy</b> , Senior Deputy District Attorney Orange County District Attorney's Office <b>Gina T. Satriano</b> , Deputy-in-Charge, Elder Abuse Section Los Angeles County District Attorney's Office
10:00 a.m.	<b>Break</b>	
10:15 a.m.	<b>Eliminating the DNA Backlog: The Sexual Assault Kit Project and Robotics in the Crime Lab</b>	<b>Kenneth W. Howard</b> , Supervising Criminalist, Forensic Biology Section Los Angeles County Sheriff's Department
11:00 a.m.	<b>Cold Hit Evidence Collection Kit- Property Crimes (CHECK-PC) Pilot Program</b>	<b>Steven R. Renteria</b> , DNA Technical Leader, Forensic Biology Section Los Angeles County Sheriff's Department
11:45 a.m.	<b>Awards Luncheon</b>	<b>Pete Demetriou</b> , Master of Ceremonies Reporter, KFWB-AM, Los Angeles
	<b>DNA Awareness Individual Achievement Award</b>	<b>Gray Davis</b> , Governor State of California
	<b>DNA Awareness Individual Achievement Award</b>	<b>Robert M. Hertzberg</b> , Speaker California State Assembly
	<b>DNA Awareness Team Achievement Award</b>	<b>Bureau of Forensic Services California Department of Justice</b>
	<b>DNA Awareness Individual Achievement Award</b>	<b>Dennis Kilcoyne</b> , Detective III, Robbery-Homicide Division Los Angeles Police Department
1:15 p.m.	<b>The CSI Effect: Demeanor, Deception &amp; Credibility</b>	<b>Cynthia R. Cohen, Ph.D.</b> , Jury Consultant Verdict Success
2:00 p.m.	<b>Break</b>	
2:15 p.m.	<b>Solving Crimes Against Peace Officers with DNA Evidence</b>	<b>William Hodgman</b> , Head Deputy, Target Crimes Division Los Angeles County District Attorney's Office <b>Darren R. Levine</b> , Assistant Head Deputy, Target Crimes Division Los Angeles County District Attorney's Office
3:15 p.m.	<b>Justice for Kari: One Step Closer</b>	<b>Tim Marcia</b> , Detective III, Robbery-Homicide Division Los Angeles Police Department

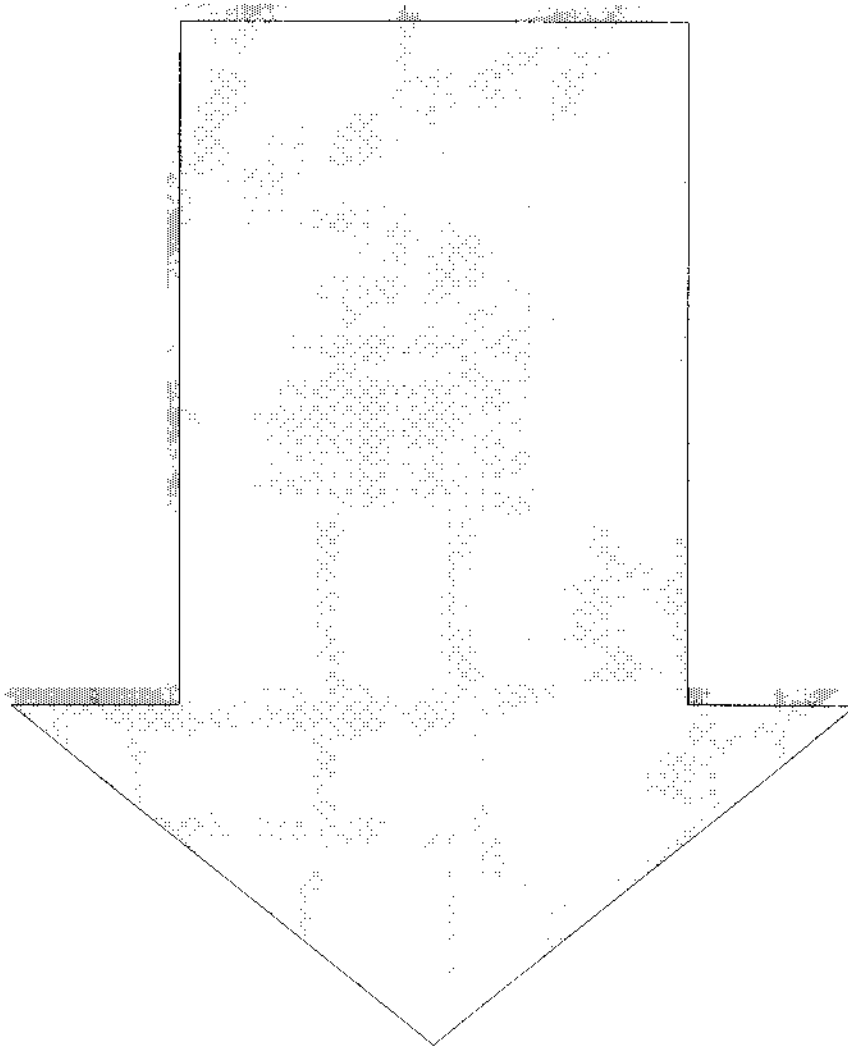
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## **Instructions for Two-Sided Printing**



Reload the entire stack of pages, including this sheet, into Tray 1 (the top tray, if there is more than one) with the printed side face up and the arrow pointed away from you. Do not load the paper into any other tray or the manual feeder.

Once that is done press the Continue Button.

10:15 – 11:15

**MEDIA COVERAGE OF CRIME VICTIMS**

**Sandi Gibbons, Moderator**  
Public Information Officer  
Los Angeles County District Attorney's Office

**Jill Leovy, Reporter/Editor**  
Los Angeles Times

**Tony Valdez, Reporter**  
FOX 11 News

**Eric Leonard, Reporter**  
KFI-AM 640

11:15 a.m. – 12:00 p.m.

**HONORING THE PAST, LOOKING TO THE FUTURE**

**Lois Haight, Judge**  
Contra Costa County Superior Court

12:00 – 2:00

**RECOGNITION CEREMONY & LUNCHEON**

2:00 – 3:00

**FAMILY VIOLENCE: MULTIPLE VICTIMS**

**Detective Dan Regan**  
Covina Police Department

**Tambria DeCorse, Supervising Victim Services Representative**  
Victim-Witness Assistance Program  
Los Angeles County District Attorney's Office

**Victor Rodriguez, Deputy District Attorney**  
Los Angeles County District Attorney's Office

**Karla Kerlin, Judge**  
Los Angeles County Superior Court

3:00 – 4:00

**HOMICIDE VICTIMS: CIVIL LAWSUITS AND OTHER REMEDIES**

**Kathleen Cady, Special Assistant**  
Victim-Witness Assistance Program  
Los Angeles County District Attorney's Office

**Eric J. Dubin, Esq.**  
Law Offices of Eric J. Dubin

**Michael A. Latin, Judge**  
Los Angeles County Superior Court

**The Honorable Karla Kerlin** has been a Los Angeles County Superior Court Judge since 2008. She is currently assigned to a high-volume misdemeanor trial court. Prior to her appointment to the bench, Judge Kerlin was a prosecutor for 18 years. She served in the Sex Crimes and Major Crimes divisions and regularly trained law enforcement and others on the investigation and prosecution of sex crimes and child abuse cases.

**The Honorable Michael A. Latin** was appointed to the Los Angeles County Superior Court in 2003 after a 16-year career with the Los Angeles County District Attorney's Office. He is the supervising site judge at the Van Nuys Courthouse and the assistant supervising judge of the Northwest District Courts of Los Angeles County. He has received a number of special commendations for his work in victims' rights advocacy.

**Eric Leonard** became a news reporter at KFI-AM 640 at age 18. He has spent the past 15 years covering major trials, political scandals, crime and other major news. An award-winning broadcaster, he is known for his ability to recall encyclopedic details of trials live on the radio. He recently covered the arrest of the accused serial killer known as the "Grim Sleeper."

**Jill Leovy** is a staff writer for the Los Angeles Times, where she covered homicide and police issues for eight years. In 2007, she created the newspaper's online Homicide Report. The groundbreaking blog attempts to chronicle every murder in Los Angeles County. She currently is writing a book for Random House on black-on-black homicide.

**Detective Dan Regan** is an 18-year veteran of the Covina Police Department. He has worked a variety of assignments, including patrol, field training and K-9. He is a member of the Covina Police Department's S.W.A.T. team, Firearms Unit and is currently assigned to the Crimes Against Persons Unit. He was previously assigned to positions with the Special Enforcement Team and Burglary.

**Victor Rodriguez** has been a prosecutor for 19 years. He has completed 75 felony jury trials, many involving murder, domestic violence and child abuse charges. He is currently the assistant head deputy of the Los Angeles County District Attorney's Sex Crimes Division, where he oversees the prosecution of cases involving child and adult sexual assault cases and civil commitments of sexually violent predators.

**Ailleth Tom, MSW** is the coordinator for Crisis Counseling and Intervention Services, School Mental Health for the Los Angeles Unified School District (LAUSD) and has worked in health and human services for 10 years. Serving as a field staff administrator, she is dedicated to working with schools and local districts on restoring and maintaining a safe and healthy learning environment for the students and staff of the LAUSD after critical incidents on or near a school campus.

**Tony Valdez** is a general assignment reporter for FOX 11 News, where he has worked as a journalist since 1980. Mr. Valdez reports the "L.A.'s Most Wanted" news segment, profiling criminal suspects and missing persons. He also hosts Midday Sunday, a weekly public affairs program which spotlights local and national issues with current headline news and news makers.

**Officer Andrey Wilkins** is a senior lead officer for the Los Angeles Police Department.



STEVE COOLEY  
LOS ANGELES COUNTY DISTRICT ATTORNEY

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210 WEST TEMPLE STREET LOS ANGELES, CA 90012-3210 (213) 974-3501

May 9, 2007

The Honorable Edmund G. Brown, Jr.  
Attorney General, State of California  
1300 I Street, Suite 1740  
Sacramento, California 95814

**Re: Partial Match Disclosure Policy**

  
Dear Mr. Brown:

I am writing to request reconsideration of the current Department of Justice policy prohibiting disclosure of forensic identification information in the event of a partial DNA match.

When California voters overwhelmingly endorsed Proposition 69 over two years ago, their expectation was that California would lead the nation in creating the largest and most expansive all-convicted-felon DNA database, one which would assist law enforcement agencies, inside and outside the state, in the apprehension of violent criminals. Although tremendous progress has been made, current DOJ policy prevents the database from being used to its maximum potential. A partial DNA match provides a powerful scientific tool for solving serious crimes. Refusing the use of this tool comes at a price. Every day a dangerous criminal remains on the streets means another day in which innocent victims are deprived justice and members of the public are unnecessarily put in harm's way.

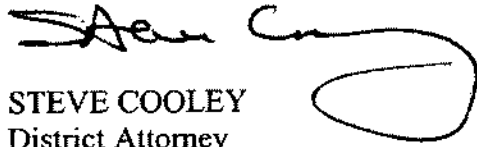
Moreover, the disclosure of partial DNA matches may also lead to the exoneration of innocent persons wrongfully convicted. "60 Minutes" recently profiled the case of Darryl Hunt, who was wrongfully convicted of a violent rape and murder 19 years ago. Thanks to North Carolina's disclosure of a partial match, Mr. Hunt is a free man, the true killer is behind bars, and the public is safer.

In our view, neither California law nor National DNA Indexing System (NDIS) policy prohibits DOJ from releasing the identity of a partial match donor. Current DOJ policy appears to be based upon a concern that partial match disclosure may unconstitutionally infringe upon privacy rights. After consulting with my Appellate Division, I have concluded that the important public interest in solving crime efficiently and accurately outweighs the asserted privacy right of the individual database donor.

The Honorable Edmund G. Brown, Jr.  
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Once again, California must seize the opportunity to lead the country in the use of DNA technology. I would like the opportunity to speak to you about this very important issue in more detail and share our legal analysis. Please contact my Executive Assistant Leticia Parks, at (213) 974-3501 to arrange a time for us to meet.

Very truly yours,

  
STEVE COOLEY  
District Attorney

cmh



# DNA TRAINING SCHEDULE

December 6, 2011-Tuesday Hall of Records, 11 <sup>th</sup> Floor, Training Room		
TIME	TOPIC	SPEAKER
9:00-9:15	Introduction	Carol Burke
9:15-12:30	Science	Marguerite Rizzo
12:30-1:30	LUNCH	
1:30-1:45	Mock Case Introduction	Marguerite Rizzo
1:45-2:45	Pretrial Motions	Diana Martinez
2:45-3:00	BREAK	
3:00-4:30	Experts	Lesley Klein

December 7, 2011-Wednesday Crime Lab-CSULA		
TIME	TOPIC	SPEAKER
9:00-12:00	Lab Tour & Criminalist Presentations	
12:00-1:30	LUNCH	
1:30-1:50	CHOP	Carol Burke
1:50-2:20	Filing	Jodi Link
2:20-2:50	Discovery	Laura Jane Kessner
2:50-3:00	BREAK	
3:00-3:45	Mock Case	Direct: Jodi Link
		Cross: Laura Jane Kessner
3:45-4:15	Resources	Cynthia Nakao

## **MULTI-DISCIPLINARY TEAM INTERVIEW CENTERS**

A multi-disciplinary team for response to child abuse allegations includes representation from law enforcement, child protective services, prosecution, medical, mental health, and victim advocacy. The purpose of interagency collaboration is to coordinate intervention and share information so as to reduce potential trauma to children and their families and improve services, while preserving and respecting the rights and obligations of each agency to pursue their respective mandates. Multi-disciplinary interventions, particularly when provided in a neutral, child focused setting, are associated with less anxiety, fewer interviews, increased support and more appropriate and timely referrals for needed services.

In cases where a child or a person with a disability is either the victim of a crime or has witnessed a crime, you may want to consider having a forensic interviewer conduct the interview of the victim or witness. There are several interviewing centers in Los Angeles County that will interview children or adults with disabilities. A comprehensive list of agencies that conduct interviews of children or adults with disabilities is included at the end.

### **CHILDREN'S ADVOCACY CENTERS**

A functioning and effective multi-disciplinary approach is the foundation of a Children's Advocacy Center. Traditionally, each agency involved in child abuse investigation has a different role in the investigation and intervention process. Sometimes, their efforts to fulfill these roles result in multiple interviews of the victim and in re-traumatizing the victim they are seeking to assist.

In the past, there was no mechanism for coordinating these services. In 1985 the first children's advocacy center (CAC) was established in Huntsville, Alabama. Children's advocacy centers are modeled on the simple but powerful concept of coordination between community agencies and professionals involved in the intervention system. Today, there are nearly 700 children's advocacy centers nationwide. Children's advocacy centers are community-based programs, designed to meet the unique needs of the particular community in which it is located.

A Child Advocacy Center is a child-focused, facility-based program in which representatives from many disciplines, including law enforcement, child protection, prosecution, mental health, medical, victim and child advocacy, work together to conduct interviews and make team decisions about investigation, treatment, management and prosecution of child abuse cases. Forensic interviews that are conducted by individuals

specially trained on evidence-based, best practices nationwide have more successful outcomes for both the child and the investigation.

The National Children's Alliance (NCA)<sup>1</sup> and American Bar Association both endorse the use of Child Advocacy Centers.<sup>2</sup> The National Children's Alliance (NCA) is the agency that sets the standards for accreditation, and all accredited CACs must adhere to these national standards.<sup>3</sup>

The California Network of Child Advocacy Centers (CNCAC) is the accredited chapter of the National Children's Alliance of California dedicated to helping local communities respond to allegations of child abuse in ways that are effective and efficient – and put the needs of child victims first. CNCAC provides training, support, technical assistance and leadership on a statewide level to local child advocacy centers and multidisciplinary teams throughout California responding to reports of child abuse and neglect.<sup>4</sup>

As a general matter, services provided at a CAC include the following:

**Multi-Disciplinary Team Response (MDTs)** emphasize coordination of investigation and intervention by bringing together community agencies and professionals involved in the investigation and care of the individual. MDTs strive for a coordinated, child-sensitive investigation of child abuse cases by professionals from multiple disciplines and multiple agencies. Emphasis is placed on the child interview, within the context of a team approach, for the purpose of reducing system-related trauma to the child, improving agency coordination, and ultimately aiding in the prosecution of the suspect. All members of the MDT share the same goals of minimizing trauma to the child by reducing the number of interviews, meeting the victims' needs, stopping the abuse, making the victim safe and holding the offender(s) accountable.

**Culturally Competent Child and Family Friendly Facilities.** The location is generally a neutral site - separate from any agency involved in the Multi-Disciplinary Team. The CAC must have the ability to appreciate, understand and interact with members of a diverse population within the location community.

**Forensic Interviewing Services.** The forensic interviewer is trained on nationally recognized best practices to conduct the interview in a neutral manner coordinated to avoid duplicative interviews. The prosecutor is encouraged to watch the interview and is consulted for input before the interview is concluded.

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<sup>1</sup> <http://www.nationalchildrensalliance.org>

<sup>2</sup> <http://www.nationalchildrensalliance.org>; [www.abanet.org/crimjust/policy/my09101d.pdf](http://www.abanet.org/crimjust/policy/my09101d.pdf)

<sup>3</sup> <http://www.nationalchildrensalliance.org/index.php?s=76>

<sup>4</sup> <http://www.cncac.org/>

**Victim Advocacy and Support** Coordinated victim advocacy services help children and non-offending family members with access to and participation in the investigation, prosecution, treatment and long-term follow up care.

**Specialized Medical Evaluation and Treatment.** These services are provided either on-site, or through affiliation with local hospitals or other facilities.

**Specialized Mental Health Services.** Provide specialized, trauma-focused mental health services, designed to meet the unique needs of the children and of their non-offending family members

**Case Review** is the formal process which enables the MDT to monitor and assess its effectiveness.

## FAMILY JUSTICE CENTERS

A Family Justice Center is a multi-disciplinary team of professionals who work together, under one roof, to provide coordinated services to victims of family violence. Family Justice Centers are specifically defined in federal law and refer to the co-location of staff members from multiple agencies under one roof. While a Family Justice Center may house many partners, the basic partners include police officers, prosecutors, civil legal service providers, and community-based advocates. The core concept is to provide one place where victims can go to talk to an advocate, plan for their safety, interview with a police officer, meet with a prosecutor, receive medical assistance, receive information on shelter, and get help with transportation.

The National Family Justice Center Alliance<sup>5</sup> helps communities develop such centers across the United States and around the world. The Family Justice Center model has been identified as a best practice in the field of domestic violence intervention and prevention services by the United States Department of Justice.<sup>6</sup> The documented and published outcomes in the Family Justice Center model have included: reduced homicides; increased victim safety; increased autonomy and empowerment for victims; reduced fear and anxiety for victims and their children; increased efficiency and coordination among service providers; and reduced recantation and minimization by victims when wrapped in services and support. (See Casey Gwinn, Gael Strack, *Hope for Hurting Families: Creating Family Justice Centers Across America* (Volcano Press 2006)).

<sup>5</sup> <http://familyjusticecenter.com/Overview/overview.html>

<sup>6</sup> [www.ovw.usdoj.gov/docs/family\\_justice\\_center\\_overview\\_12\\_07.pdf](http://www.ovw.usdoj.gov/docs/family_justice_center_overview_12_07.pdf)

Valley CARES Family Justice Center<sup>7</sup> is the only Family Justice Center in Los Angeles County at this time. Valley CARES works in close association with CATS (see interview sites, below), a Sexual Assault Response Team that provides coordinated services to adult and child victims of sexual assault and abuse. Victims of domestic violence are interviewed by either a detective or a forensic interviewer at CATS. Valley CARES pays particular attention to strangulation cases and documents all physical injuries associated with the assault, both initially as well as in follow up care. Victims who come to the Valley CARES Family Justice Center receive many services including:

- Accompaniment to court, follow-up interviews and meetings
- Advocacy
- Assistance with access to shelter
- Case management
- Childcare while receiving services at the center
- Civil law services, such as restraining orders, custody and divorce issues, and "U Visa"
- Counseling
- Education and employment planning
- Emotional support
- Financial assessment and planning
- Housing assessment and planning
- Language interpretation in more than 140 languages through our Cyracom translator telephones
- Law enforcement expertise
- Medical evidentiary exams by specially trained forensic nurse examiners
- Safety planning
- Referrals to specialized services for the elderly and disabled
- Support groups

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<sup>7</sup> [www.valleycaresfjc.org](http://www.valleycaresfjc.org). Their address is confidential and they can be reached at 818-304-8900.

## CHILD INTERVIEW SITES IN LOS ANGELES COUNTY

Within Los Angeles County there are several centers where forensic interviews of children and adults with disabilities are conducted. Many of these centers have interviewers who speak Spanish. Some centers audio and videotape the interview. Some of these are Child Advocacy Centers, some use a Multi-Disciplinary Team Approach. Some centers are accredited CACs by National Children's Alliance.

### **Center for Assault Treatment Services (CATS)**

#### **Northridge Hospital Medical Center**

14531 Gault Street

Van Nuys, CA 91405

Kathy Adams, R.N., Clinical Manager

<http://www.abuse-assaultservices.org/>

### **Children's Advocacy Center**

363 South Park Avenue

Pomona, CA 91766

Jeanne Roy, M.A., M.F.T., Executive Director

909-629-6300

<http://cacpomona.org/>

### **Children's Hospital Los Angeles**

#### **Audrey Hepburn CARES Center**

Comprehensive Medical and Mental Health Services for

Victims and Suspected Victims of Child Abuse

4650 Sunset Boulevard

Los Angeles, CA 90027

Karen Kay Imagawa, M.D., Director

323-671-2060

[http://www.chla.org/site/c.ip1NK1OAJsG/b.3829787/k.88BC/Child\\_Abuse.htm](http://www.chla.org/site/c.ip1NK1OAJsG/b.3829787/k.88BC/Child_Abuse.htm)

### **Violence Intervention Program**

#### **LAC+USC Medical Center**

1240 North Mission Road

Los Angeles, CA 90033

Lydia Joseph-Hernandez, Psy.D.

323-226-6767

<http://violenceinterventionprogram.org/>

**Stuart House Rape Treatment Center**  
**Santa Monica-UCLA Medical Center**  
1250 Sixteenth Street  
Santa Monica, California 90404  
Nicole Farrell, MSW, Child Interview Specialist  
Direct: 310-463-1275 Office: 310-319-4248  
<http://www.911rape.org/about-us/who-we-are>

**Los Angeles County**  
**Harbor – UCLA Medical Center**  
**Child Sexual Abuse Crisis Center**  
1000 West Carson Street, Unit N26, #460  
Torrance, CA 90509  
Rosanna Beaumont, M.A., Program Director  
310-222-3567  
No website at this time.