Successfully Investigating Acquaintance Sexual Assault: A National Training Manual for Law Enforcement

The National Center for Women and Policing
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Sex Offenders: Dynamics and Interview Techniques

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Sex Offender Dynamics\(^{(1)}\)

The Stereotypes

Most people picture a rapist as looking and acting a certain way, and if questioned would give some version of the following description:

*He's mean looking, and he carries some type of weapon. He stalks his victims like a predator, attacking women at night in parks and dark streets, or breaking into their homes. He leaves them physically brutalized and emotionally scarred.*

This is a compelling description of what most people fear. It is also an accurate description of the stereotypical rapist. But in most cases it is absolutely false.

Although the actions of all rapists are hideous, they do not necessarily "look mean" any more than Ted Bundy or Jeffrey Dohmer did. As discussed in the module on dynamics, most rapists do not carry or use a weapon. Most rapists do not stalk darkened streets and parks, nor do they break into homes. And most rapists leave few if any physical marks on their victims. The only true statement in the description above is that the rapist's victim is indeed left emotionally scarred. The psychological trauma of rape can last a lifetime.

The Truth

The truth about the rapist is that he can and does look like "any man." He is a doctor, a lawyer, a corporate executive, a college athlete, the "good" Samaritan who offers help to the stranded woman, the handsome guy she meets at a friend's house, and the former boyfriend who still has a key to the victim's apartment.

So, why do these false stereotypes of the rapist still exist?

If the stereotype of a rapist is so far from the truth, why does it continue to be held so widely and so persistently in our society?

- One reason is that the stereotype of a rapist is actually comforting to many people. If someone thinks that they can spot a rapist by how he looks, and they can avoid him by evading darkened streets and double-locking their doors, then they can give themselves a feeling of safety, even if it is only the illusion of safety.
- Another reason for the persistence of false stereotypes is that they are fed by high profile cases of serial rapists, cases that terrorize the public and seem to infatuate the media and the public.

These stereotypes have also been perpetuated by decades of research on the incarcerated/detected rapist. For years, social scientists studied detected rapists and published their findings. Many of these rapists were indeed very violent, many used weapons, and many attacked strangers. What was overlooked was the fact that these very characteristics - the use of violence

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\(^{(1)}\) This section represents an original contribution by Dr. David Lisak. For examples of early research on incarcerated rapists, see Karpman (1954) and Groth (1979). For examples of research on "undetected" rapists, see Kanin (1984), Lisak and Roth (1990), Lisak et al. (1996), Lisak and Ivan (1995), Malamuth et al. (1991), and Hall & Barongan (1997).
and weapons - were precisely the factors that put these rapists behind bars. The sex offenders who were committing the vast majority of rapes were more clever about their choice of victim (they attacked "acquaintances") and more controlled in their aggression. As a result, these rapists were rarely reported by their victims; if reported, they were rarely prosecuted; if prosecuted, they were rarely convicted. As a result, they were almost never studied by social scientists.

Research on the Undetected Sex Offender

It is only within the past 20 years that the truth about rape and the sex offender has begun to emerge. Studies of victims reveal that barely 10% ever report the crime, and that 80% are raped by men they know to some degree, including men they met at a party, men who picked them up in a bar, men who escorted them home at night, and men who they used to date. These studies prompted researchers to begin studying "undetected" rapists; criminals who were flying below the radar screens of the criminal justice system.

By using new research methods, gradually more and more has been learned about these offenders, the men who are and always have been responsible for the vast majority of sexual assault crimes. The following summary of research findings paints a far more accurate picture of the "typical" sex offender than the one portrayed by the stereotypes described above.

Premeditation

Sex offenders who attack women they know are sometimes tagged with the misnomer, "date rapist." Often, there is the implication that the man and the woman went out on a date, started having sex, and then "somehow things got out of hand." Actually, these sex offenders typically premeditate the sexual assault with great detail and cunning.

These rapists typically manipulate their victims into positions of vulnerability by getting them alone in a room, a car, or in a secluded area. They ply their victims with alcohol and, increasingly, use so-called "date rape drugs" to disable them entirely.

Perhaps the clearest indicator of the premeditation behind these assaults is the fact that they tend to be repeated. Recent research indicates that, just like incarcerated rapists, undetected rapists are repeat offenders who use violence in many domains.

- One sample of 122 undetected rapists admitted to 386 rapes, 20 other acts of sexual assault, and 264 acts of battery against intimate partners.
- These same 122 rapists also admitted to 365 acts of sexual abuse against children and 91 acts of physical abuse against children.

Instrumental Violence

A key characteristic of the "undetected" sex offender is that they tend to use only as much violence as is necessary to intimidate their victim and ensure her submission. They use verbal

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2 For examples of recent research on the prevalence and characteristics of rape, see Koss et al. (1987) and National Victim Center (1992).
3 Lisak & Miller 1999
4 Ibid.
threats, and often in a more sophisticated manner than simply threatening physical harm. For example, they may tell their victims, "you're drunk, no one will believe you," or "if you tell anyone, it's your reputation that will suffer." These offenders will escalate their level of threat and violence as needed, typically using their body weight and arms to pin down their victims and terrify them into submission.

**Use of Alcohol**

Alcohol is an extremely common ingredient in sexual assaults, often consumed by both the victim and the perpetrator. Many rapists use alcohol to disinhibit themselves and also to render their victim more vulnerable. Many rapes occur when the victim has been rendered either semi-conscious or entirely unconscious from the effects of alcohol.

**Sexual Behavior**

Undetected rapists have consistently been shown to be more sexually active than other men. Apart from their sexually aggressive behavior, they engage in consensual and coercive sex far more often than is typical for men of their age group. Their sexual activity tends to be an important component of their identities. Thus, rather than being a product of greater sex drive, their increased sexual activity appears to be driven by their view that if they are not very active then they are neither "successful" nor adequate as men.

**Attitudes and Beliefs**

Sexually aggressive behavior is typically part of a belief system that views women as sexual objects to be conquered, coerced and used for self-gratification. Undetected rapists are much more likely to hold stereotyped beliefs about the "proper" roles for women and men in society, and to rigidly adhere to those beliefs. They adhere to "rape myths" that both justify their aggressive acts and foster them. Their adherence to rape myths and rigid stereotypes frequently allows them to distort their perceptions of their victims' behavior. For example, because they tell themselves that "women say no to sex even when they really want it," they can disregard their victims' obvious signs of terror and resistance.

**Underlying Motivations**

Undetected rapists have repeatedly been found to harbor chronic, underlying feelings of anger and hostility toward women. They typically feel easily slighted by women, and carry grudges against them. This underlying hostility is easily evoked and colors their distorted perceptions of women as "teasers" who either "secretly" want to be coerced into sex, or else "deserve" it. These men have also consistently been shown to have strong needs to dominate and to be in control of women, and to be particularly fearful of being controlled by women. This characteristic leads them to view sexual relations as "conquests," and all women as potential "targets" of conquests. Consistent with their very stereotyped beliefs about sex roles, undetected rapists are shown to be more emotionally constricted than nonaggressive men. They are less able to label their own emotional experience, and much less emotionally expressive. As a consequence, they are also less capable of resonating with the emotional experience of other people, and are therefore less empathic than nonaggressive men.

**Sexually Violent Subcultures**

A consistent finding in the research on "undetected," sexually violent men is that most of this violence emerges either directly or indirectly from what have been termed "sexually violent
subcultures.” Examples of such subcultures include fraternities and delinquent gangs. These subcultures are powerful forces that both reflect the rapist's views about women and sexual conquest, and also help to shape them. For example, at certain college fraternities the use of violent pornography is a frequent form of "entertainment," providing explicit images of rape as being acceptable, noncriminal, and a sign of male virility. Within these subcultures, "sexual conquest" - having sex with as many women as possible - becomes a critical measure of how men view themselves and each other. The greater the number of such conquests, the more manly he is. The use of coercion and violence to secure these conquests is normalized in the subculture and becomes simply another part of the man's "sexual arsenal."

Hypermasculinity

Consistent with their stereotyped and rigid views about the "proper" roles of men and women in society, undetected rapists tend to adopt highly "gendered" identities; that is, they see themselves as hypermasculine; they strive to always behave in rigidly and stereotypically masculine ways. They are always on the alert for any perceived slight to their masculine identities, and they are made very anxious by any situation that might cast doubt on their perceived masculinity. When such deeply held beliefs are combined with the effects of sexually violent subcultures, as described above, the mixture often becomes dangerous. The "power" motivation that underlies the constant striving for sexual conquest mixes with the rapist's underlying hostility toward women and his hypermasculine identity. When a woman resists his coercive sexual pressure, he is very likely to perceive this as a challenge and affront to his masculinity and to react with anger and aggression, behaviors that restore his sense of adequacy.

Developmental Antecedents

While the traditional view about incarcerated rapists was that they harbored deep-seated anger towards their mothers, the evidence indicates that among undetected rapists, anger and disappointment about their fathers is far more salient. For some of these men, damaged relationships with their fathers appears to feed their need to view themselves as hypermasculine, and to drive their rigidity and stereotyped beliefs and behaviors. Another developmental factor that has been associated with sexual aggression is child abuse. The rate of child abuse among undetected rapists, particularly childhood physical abuse, is much greater than it is among nonviolent men.

Implications for Police Investigation

Obviously, there is no one profile or even group of profiles that characterize these undetected sex offenders; in fact, research indicates almost precisely the opposite. They come from all races and ethnic groups, all professions and all socioeconomic classes. However, many of these sex offenders are likely to differ in significant ways from sex offenders who attack strangers. For example:

- Most undetected sex offenders have committed multiple offenses without ever being confronted by a law enforcement officer.
- Many of these sex offenders will possess very smooth personal styles. They may have considerable psychological sophistication.
- If confronted with an accusation, they may quickly and smoothly focus the conversation on the behavior of the victim, subtly undermining her credibility and laying the foundation for the inevitable "consent" defense.
• For this reason, comments about the victim's promiscuity, or drug use, or prior "false" accusations should be expected.

**Research on the Detected Sex Offender**

To identify, apprehend, and interview sex offenders, many investigators find it useful to draw on research conducted with detected/incarcerated sex offenders. In fact, this information can be very helpful for a better understanding of sexual assault crimes and dispelling societal stereotypes associated with the rapist. For example, the following statistics illustrate current knowledge on the detected sex offender:

• It is assumed that these rapists will attack multiple times over the course of a lifetime. Research suggests that many sex offenders show a continued propensity to reoffend\(^5\).

• Fifty percent of incarcerated sex offenders are suspected of having a childhood history of sexual or other physical abuses (although many abused children grow up to be non-abusive adults)\(^6\).

• A variety of federal statistical sources show a remarkable similarity in the characteristics of these rapists: 99 in 100 are male; 6 in 10 are white; and the average age is the early thirties\(^7\).

• Rapists and sexual offenders serving time in state prisons were less likely to have had a prior conviction history of violence than other incarcerated violent offenders, though they were substantially more likely to have had a history of convictions for violent sex offenses\(^8\).

• Violent sex offenders were substantially less likely than other offenders to have committed their crime with a weapon; however, rapists were about as likely as violent offenders to report having used a knife\(^9\).

• "About 30% of rapists and less than 15% of other sexual offenders reported that their victims had been strangers to them."\(^{10}\) In addition, 25% of convicted sexual assault offenders reported that their victim was a child or stepchild\(^{11}\).

Clearly, many of these characteristics challenge the stereotypes of "real rape" by suggesting that even incarcerated rapists are less likely than other types of violent offenders to assault a stranger, use a weapon, or report a prior conviction. However some characteristics, such as the likelihood of using a knife, confirm that sex offenders who are incarcerated are more likely than those who remain undetected to have committed something that looks like "real rape." In

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5  English, Pullen, Jones, & Krauth, 1996  
6  Greenfeld, 1997  
7  Ibid.  
8  Ibid.  
9  Ibid.  
10 Ibid.  
11 Ibid.
other words the more an offense looks like "real rape" (e.g., assault by a stranger, with a weapon) the more likely it is that the perpetrator will be convicted for it.

**Research on Adolescent Sex Offenders**\(^{(12)}\)

According to the U.S. Department of Justice, in 1993, more than 15% of rapes and sexual assaults were committed by juveniles. Other estimates of juvenile sex offending are much higher, some indicating that approximately 30% of child sexual abuse is perpetrated by juveniles\(^{(13)}\). Some investigators have tried a retrospective approach to assess the magnitude of juvenile offending. They have given immunity and then interviewed incarcerated sex offenders, inquiring both about their true number of victims and also about the age at which they began offending. More than half of these men reported that they began sex offending as juveniles, many of them compiling hundreds of victims before being caught and incarcerated as adults.

- One recent study used the polygraph to ascertain the magnitude of offending in a sample of 36 juvenile sex offenders. These juveniles initially reported a total of 111 victims\(^{(14)}\). When told that they would be asked the same question under polygraph, however, they admitted to an additional 77 victims and 153 other offenses\(^{(15)}\). When actually monitored using the polygraph, the numbers of reported offenses again increased with an additional 19 more victims and 359 more incidents\(^{(16)}\).

- These statistics strongly suggest that juveniles represent a substantial proportion of the sex offending population. Further, they indicate that many juvenile offenders are only beginning a long career of sex offending.

- When research is used to examine the characteristics of those individuals it reveals that the majority of juvenile sex offenders do not fit the stereotype of the delinquent youth. Most come from two-parent homes and fewer than five percent have been previously diagnosed with a mental disorder. Sixty-five percent had no history of behavior or characteristics that would have indicated any likelihood of offending. However, there appears to be an over-representation among these offenders of a variety of school problems, including learning disabilities, special education needs, truancy and other behavior problems.

For a number of reasons, therefore, adolescent and young adult rapists are often dismissed or sentenced leniently. Partly, this is based on their appearance as "normal kids" who do not fit the profile of the delinquent youth. Partly, this happens because of the mistaken assumption that they are just experimenting sexually and will grow out of it. The bottom line is that sex crimes committed by juveniles should be taken seriously in order to prevent these youth from continuing to commit sexual assault crimes throughout their adulthood.

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\(^{(12)}\) For a comprehensive source on juvenile sex offending, see Ryan (1997).

\(^{(13)}\) Ryan, 1997

\(^{(14)}\) Chambers, 1994

\(^{(15)}\) Ibid.

\(^{(16)}\) Ibid.
The Consent Defense and Implications for Police Investigation

Since the vast majority of sexual assault cases will hinge on the issue of "consent," and not on the identity of the alleged assailant, it is often a good tactic in the suspect interview to downplay the seriousness of the situation and the charge. By intimating that the case doesn't sound like "real rape," and that the interviewer shares the suspect's views on women and sex, the interviewer may be able to elicit incriminating statements from the rapist.

For example, many undetected sex offenders adhere to the societal stereotypes associated with the "real rapists" and firmly believe that they are completely different. These offenders may be convinced that using a "little force" is simply "rough sex;" that it is not "real rape" if they had drinks with the victim or if there was previous sexual activity. Thus, as long as the interviewer does not disabuse them of these erroneous beliefs, the rapist may well disclose incriminating statements.

When a rape case hinges on the issue of consent, law enforcement personnel often despairingly refer to it as a "he-said-she-said" situation, a contest of credibility. However, research indicates that most of these previously undetected rapists have committed prior offenses. Therefore, a good tactic in any investigation is to comb the rapist's social circles for other victims. Whether it be favorite bars and clubs, a college campus, or the office where he works, sending out "feelers" may well yield results. Former girlfriends and women he dated may have stories of battery or rape to tell.

Conclusion

Researchers have attempted to classify rapists by their behavior. However, most of this research has been conducted with incarcerated individuals. This research does not accurately reflect the entire population of offenders and tends to be comprised of disproportionately high percentages of violent sexual offenders and "stranger" rapists. Surveys of sexual assault victims continue to confirm that although the vast majority of sex offenses are committed by someone known to the victim, these offenses typically go unreported. They are usually committed by men who are never arrested, let alone convicted and incarcerated for their crimes.

Having said this, it is essential that law enforcement have all the tools and knowledge available when investigating a suspected sex offender. The remainder of this module will discuss the most commonly used personality disorders and characteristics often associated with sex offenders and interviewing techniques essential to a successful investigation.

These characteristics are drawn from research based on criminal personalities and can be used by law enforcement to guide their investigation of a suspect in a sexual assault crime. However it is critical that officers simultaneously maintain an open mind throughout the investigation and dismiss the common stereotypes associated with the "real rapist."

Suspect Interviewing Techniques

It is important for the investigator to understand that offenders who commit the vast majority of reported sexual assault crimes know their victims, and they have never been in contact with law enforcement. Therefore, it is essential that investigators become familiar with the research
on undetected sex offenders as summarized in the last section. This research supplements the information that was also provided regarding the known characteristics of incarcerated offenders.

In 1997, Groth, Burgess & Holmstrom published what is currently the most widely used classification system for profiling and identification of the "unknown" sex offender (e.g. Power Rapist, Anger Rapist and Opportunistic Rapist). Many law enforcement officers describe this suspect typology as important and useful, so it is discussed in "Suspect Typology," an additional section within the supplemental materials.

Because the purpose of this curriculum is to focus on the majority of sex offenders who are "known" to the victim, however, we will focus in this module on the personality characteristics and patterns that are perhaps more relevant for this population and purpose. This information pertains to personality disorders, and the techniques to use when interviewing suspects with associated characteristics.

The following section builds on this discussion to recommend techniques for conducting an effective interview with the sex crime suspect. These techniques include how to strategize the interview when the suspect displays characteristics associated with a specific personality disorder. While these techniques are useful, they must only be used with recognition of the limitations and risks associated with categorizing offenders. Experienced investigators understand that sex offenders may display any or none of these personality traits, and that the key to a successful interview is therefore to remain flexible and conduct a creative investigation.

**Preparation for the Suspect Interview**

Law enforcement officers have been traditionally trained to interview victims and interrogate suspects. Most interrogations, however, should begin as an interview. As with other interviews, a number of general recommendations thus apply:

- Officers should allow the suspect to offer as much information as he wants without interruption.
- It is best not to attempt to confront or interrogate the suspect about any admissions and inconsistencies in his statement until his complete statement is recorded.
- Investigators must remember that confessions are rare, but that a good interview can produce numerous admissions.

Initially, admissions might appear insignificant, but in the case of a one-on-one assault with limited physical evidence, any can boost the credibility of the victim. Those statements can thus be extremely useful evidence at trial.

**Consider Conducting a Pretext Phone Call**

Another useful piece of evidence can be the transcript from a "pretext phone call," also knows in some areas as a "confrontational call" or "monitored call." Although they are not legal in some states and strictly limited in others, investigators in those states where they are allowed should always consider using a pretext phone call in cases where the suspect and victim know each other. The recording obtained from a pretext phone call can be very helpful in determining facts
and admissions of actions, and it can be useful in subsequent interviews with the suspect and for impeachment purposes. Techniques for conducting a successful pretext phone call are presented later in this module.

Determine Whether the Rape was "Blitz" or "Confidence"

"Blitz rape" and "confidence rape" are terms that have been developed by clinicians and researchers to describe stranger and non-stranger sexual assaults\(^\text{17}\). By determining which type of rape has been committed the investigator can then determine the suspect's defense and therefore guide the interviewing strategy.

- A "blitz rape" is a sudden surprise attack by an unknown assailant. This is the type of assault that most people think of as "real rape," and the type that has traditionally received societal attention and concern.
- A "confidence rape" involves some nonviolent interaction between the rapist and victim before the attacker commits the sexual assault. The perpetrator uses the relationship to gain access to the victim.

The investigating officer should make every attempt to immediately identify whether the assault was a blitz or confidence attack. This information will help determine whether the suspect is likely to deny any contact with the victim (usually in the case of a blitz rape) or claim that she consented (usually in the case of a confidence rape). This knowledge will help the investigator conduct an appropriate investigation and suspect interview.

Choose an Appropriate Time and Place for the Interview

The timing of the interview can be very important. Generally, it is recommended that the suspect is confronted as soon as practical -- preferably before he learns about the investigation -- to lock him into his story. If the suspect is surprised, he will be less able to construct mental defenses and alibis.

\textit{Although the purpose of confronting the suspect as soon as possible is to give him less time to construct a defense, officers should make a timing determination on a case by case basis. This decision should be made in consideration of issues such as the victim’s safety and suspect personality/typology.}

In addition to the timing, the location of the interview can be very important because it has an impact on whether:

- The suspect feels free to leave
- The suspect feels more versus less threatened, and
- Whether Miranda warnings must be given to the suspect.

If the suspect is someone with a lot of personal power, removing the suspect from his home or place of employment may help reduce his feeling of control. If the suspect is someone with very little personal power or presence, taking the suspect "to the station" may cause him to feel so threatened that he will only think about protecting himself. This may make admissions harder.

\(^{17}\) Bowie et al., 1990
to obtain. In either case, the interrogation should be conducted in a place that is quiet and free from any potential distractions and interruptions.

**Learn all Relevant Information**

Officers must be familiar with background information on the suspect in order to assess the facts and circumstances and the personality of the suspect, such as the following:

- Criminal history, conviction history, and reports of uncharged acts, (even traffic tickets)
- Information from other officers who know or who have previously investigated the suspect
- Probation record, parole status and any psychiatric treatment reports
- Any information from/about family members, friends, neighbors, etc.
- Relationship between suspect and victim(s). For example, do the suspect and victim(s) know each other from work, are they neighbors, friends, or partners etc.

In addition to these general considerations, investigators should also take into account any personality characteristics or disorders of the suspect that might affect the style and tone of a suspect interview.

*In cases of multiple suspects, the investigator should identify dominant vs. passive suspects and assess their behavioral characteristics/personality traits. Multiple suspects should always be interviewed separately.*

**Using the Polygraph with Sexual Assault Suspects**

Although the polygraph is not recommended for use with sexual assault victims, it can be a valuable resource when interviewing suspects. The evidence from a polygraph is inadmissible in court, but it can be used to direct an investigation and provide additional information to an investigator. To that extent, the polygraph should be considered one tool among many that can be utilized in the context of an entire sexual assault investigation.

One reason that polygraphs are useful with sexual assault suspects is because they are often narcissistic and more than willing to submit to its use. Because these suspects operate in a society that quickly judges sexual assault victims, they are often confident in their ability to use these biases to their advantage. Of course, the polygraph test is fallible, but at the very least it provides the investigator with a second opportunity to observe and talk with the suspect. When the suspect fails, however, this can provide direction to the investigation and form the basis for confronting him to confess or make incriminating admissions.

When preparing for a polygraph examination, investigators should meet with the polygraphist in advance to discuss the investigation and prepare test questions that will be asked. Questions must be specific, with no room for interpretation. These test questions can also be used to clarify issues such as the suspect's understanding of sexual terms (i.e., the definition of sexual intercourse). To illustrate, the following questions would be ineffective because the sexual terms have different meanings to different people:

- Did you molest Janice?
- Did you have sex with Janice?
Rather, questions should specifically address elements of the crime:

- Did you put your finger in Janice's vagina?
- Did your penis touch Janice's thigh?

In cases where the suspect completely denies sexual contact, it may be significant to simply establish that a sexual act occurred. However, when the suspect raises a consent defense it is also necessary to establish that force was used to accomplish the act. In these cases, questions such as the following should be used:

- Did you force your finger in Janice's vagina?
- Did you threaten to hurt Janice if she didn't put her mouth on your penis?
- Did you have a weapon with you when you had intercourse with Janice?
- Did Janice agree to have intercourse with you?
- Was Janice crying when you were having intercourse with her?
- Did Janice tell you she did not want you to put your penis in her anus?

If the Suspect Confesses, Consider Using an "Apology Letter"

In some cases, it may be appropriate to use an "apology letter" from the suspect\(^{18}\). Although this type of letter is not a new idea, some have suggested that it is underutilized in the area of sexual assault investigation.

Specifically, an apology letter is used after the suspect has made a confession -- or a partial admission, perhaps acknowledging that the "consensual sex" involving the victim was rougher than usual. At this time, the investigator suggests to the suspect that he write such a letter to the victim (or the victim's family, or prosecutor, etc.), in order to explain his perspective on the incident. If the suspect objects, the investigator can use persuasion to convince the suspect that this type of letter will be used to demonstrate remorse to the prosecutor or judge. Another tactic is to explain to the suspect that police reports are "black and white" and only report facts, not sentiments. The investigator can then offer the suspect the opportunity to supplement this report with a letter demonstrating his true feelings and remorse about the incident.

This technique is recommended for suspects who have confessed and are left somewhat vulnerable. The apology letter represents an opportunity to "put the whole thing behind them" or "try to make things right." Perhaps surprisingly, advocates of this technique suggest that nearly all suspects can eventually be convinced to write such a letter. The value of the apology letter is that it supplements the confession as evidence, and it often persuades suspects to plead out and avoid a lengthy trial.

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18 This information was provided by Detective Enrique Garcia of the Sexual Assault Investigations Unit of San Jose Police Department.
Personality Disorders and Suspect Interviewing Techniques

The following are techniques for interviewing different personality disorders that might be observed among suspected sex offenders. However, this discussion is based on research for recognizing criminal personalities more generally, not just with sex offenders. In addition, investigators are cautioned that offenders might manifest a blend of characteristics associated with the various personality disorders, or they may exhibit none of these characteristics at all. Therefore, the interviewing officers may need to change his or her tactics during the course of the suspect interview based on information that is revealed regarding any personality characteristics or disorders.

Psychopathic (Antisocial, Sociopathic)

An individual who is psychopathic may have a lifelong history of misconduct. For example, as a child, a psychopath may have participated in truancy, vandalism and fighting. As an adult, he may be involved in multiple relationships, experience failure to meet financial obligations, and have difficulty maintaining steady employment.

In addition, a psychopath is often indifferent toward others and has no qualms about lying for gain or pleasure. The predominant trait of this individual is egotism. Other traits may include cunning and "macho" behavior.

Interview Techniques

- If the suspect is previously unaware of being the target of a police investigation, a premature approach by law enforcement could drive him into more discreet activities, thus complicating the investigation.
- An experienced investigator should conduct this suspect interview because this personality type can be extremely challenging.
- The interrogator should have knowledge of sadistic behavior and related methods of committing sex crimes.
- The investigator should present a professional "command presence" during the interview. It is important that the interviewing officer wear a suit or a police uniform. This technique will help the officer assume control of the interview.
- The interviewing investigator should address the suspect with a respectful title (at least initially).
- It is important that the investigator show respect for the suspect's intelligence. For example, investigators can act as if they are learning from the suspect and are genuinely curious about how the suspect committed the crime.
- The investigator should be careful when considering whether to "bluff" during the interview. For example, some suspects when confronted with an apparently overwhelming body of evidence may bargain or deal to minimize punishment. However, this is not always the case. In fact, the investigator may undermine the success of the interview by presenting false evidence and appearing weak.

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19 Material in this section was adapted with permission from the California Commission on Peace Officer Standards and Training Telecourse manual entitled: Recognizing Criminal Personalities. Other material was adapted from Comer (1992).
• The investigator should allow the suspect to take center stage, and use open-ended questions as a central component of the interview.

• These suspects generally have above-average intelligence and are cunning. They may attempt to deceive the investigator and manipulate the interrogation. For example, the suspect may show emotions that are not real.

• The investigator should be aware that this suspect would not be affected by being caught in a lie or an obvious distortion. The suspect is likely to disregard or ignore this fact without being bothered by it.

• These types of suspects may attempt to shock or offend the investigator as a way of disrupting or controlling the interview.

• The investigator should allow the suspect to confess in the third person.

**Narcissistic (Narcissism)**

Narcissism implies self-love as opposed to object-love or love of another person. A narcissist may live a life of fantasies about their success, beauty, and remarkable talent. These individuals are so self-focused that they look to others only to further their own goals. They are rarely attentive to the needs of others. A narcissist believes that he or she is "special" and "unique" and can only be understood by other "special" or "high status" people.

Other personality traits of the narcissist may include:

• self-entitlement
• hypersensitivity to criticism (real or perceived)
• envy of others, and
• feelings of worthlessness.

The behavior of a narcissist is designed to extract praise, admiration, and special consideration from others. These individuals will often exaggerate unrealistically about their successes, and they are typically boastful and arrogant.

**Interview Techniques**

Many of the interview techniques for the narcissistic personality are identical to those of the psychopath.

• The investigator should present a professional "command presence" during the interview. It is important that the interviewing officer wear a suit or a police uniform. This technique will help the officer assume control of the interview.

• The interviewing investigator should address the suspect with a respectful title (at least initially).

• It is important that the investigator show respect for the suspect's intelligence. This suspect will want the investigator to recognize that he has superior qualities and has the ability to get away with committing a crime.

• The investigator should be careful when considering whether to "bluff" during the interview. For example, some suspects when confronted with an apparently overwhelming body of evidence may bargain or deal to minimize punishment. However, this is not always the
case. In fact, the investigator may undermine the success of the interview by presenting false evidence and appearing weak.

• The investigator should begin the interview by asking for the suspect's side of the story. It is important that the investigator give the impression that he/she finds it difficult to believe a person of the suspect's status and intelligence would be involved in something like a sexual assault.

• It is important for the interviewing investigator to make comments throughout the interview that convey true understanding, rather than simply nodding or otherwise acknowledging the suspect's statements. For example, the investigator can provide positive reinforcement to the suspect for participating in the interview.

• The investigator should not expect any empathy or concern for the victim, interviewer, or the investigation. Any actions or behaviors displayed by the suspect during the interview will be entirely self-serving. These suspects are totally unable to see things from any perspective other than their own.

• It is important that the investigator avoid all forms of accusations or debate during the interview. This suspect is extremely sensitive to criticism, real or perceived. If the investigator attempts to debate with the suspect, he/she will only undermine communication and the success of the interview.

• A useful technique when interviewing these suspects is to review the information obtained during the interview and ask for the suspect's analysis as if he were the investigator.

Paranoid

Paranoid is a term commonly used to describe an overly suspicious person. This individual shuns close relationships and often suspects others are intending to harm him/her. A paranoid individual is usually hypervigilant to the surrounding environment and to criticism.

The paranoid individual often feels threatened (whether real or perceived), and he/she is therefore watchful and quick to react. Additional characteristics of a person who is paranoid may include brooding, difficulty in forgiving, lack of a sense of humor, quarrelsome behavior, and an abrasive and resistive attitude to external authority and control.

Interview Techniques

• When interviewing a paranoid individual, the investigator should remove any items or clothing that might signify authority. For example, the investigator should remove his/her gun, badge, police lapel pins, and tie clips before beginning the interview -- of course, taking into consideration officer safety at all times.

• If possible, the investigator should conduct the interview in a formal, sterile environment. For example, it is advisable to use an interview room free of outside noises and disturbances. In addition, the investigator should be aware that any offers of hospitality such as, coffee, snacks, and the use of the bathroom may be viewed suspiciously by the suspect.

• The interviewer should strive to create an environment that is candid and open, yet formal. The suspect may truly believe that he has been greatly wronged.

• The investigator should use non-threatening posture/body language, and maintain physical distance in order for the suspect to remain as comfortable as possible.
• Interpersonal relationships are not important to this type of suspect, so the investigator should understand that the development of rapport will be limited. In addition, the use of humor may be viewed as a weakness.

• The investigator must give the suspect the opportunity to vent about the situation without attempting to change his perceptions.

• It is important for the investigator to make comments throughout the interview that convey true understanding, rather than merely nodding.

• It is essential that the interview remain focused on the facts and circumstances of the sexual assault. The interviewer should never allow the suspect to change the subject of the conversation.

Paraphilic (Paraphilia)

Paraphilia is a condition in which persistent and repetitive sexually arousing fantasies of an unusual nature are associated. For example, a paraphilic may have a sexual preference for a non-human object for sexual arousal, repetitive sexual activity with human beings involving real or simulated suffering or humiliation, or repetitive sexual activity with non-consenting partners.

Other types of paraphilias include: fetishism, transvestitism, pedophilia, exhibitionism, voyeurism, sadism, sexual masochism, and/or partialism. The investigator must recognize that paraphilic behavior is a long-term personality disorder and difficult to treat. These deviant sexual behaviors accumulate and are not discarded.

Interview Techniques

• The investigator conducting this interview must be very comfortable with aberrant sexual behaviors in order to conduct a thorough interview with this type of suspect.

• The investigator should use a soothing and reassuring voice throughout the interview and refer to the suspect by his first name. It is best to stay away from harsh terminology (e.g., pervert, rapist, molester, etc.) during the interview. This type of language will only alienate the suspect.

• While conducting the interview, the investigator may find that some suspects will respond better to individuals of one gender than another. Therefore, the investigator should be prepared to arrange for an interviewer of the other gender if necessary.

• This type of suspect will tend not to believe that anyone can understand how they feel. Therefore, it may be useful for the investigator to focus on post-offense remorse and guilt by demonstrating that he/she knows what the suspect is going through.

• The investigator should minimize the offense as a technical violation of the law and not attach a moral judgement to it. It is important to make the suspect believe that he will not be rejected no matter what behavior he admits to having committed.

• Interviewers can let the suspect know that the "system" has failed him and convey that they understand his struggle.

• The investigator should never show doubt as to the events being investigated or the victim's account of what took place.
• Investigators must remember that this type of suspect can compartmentalize his criminal behavior and appear normal. This type of suspect may therefore try to keep the interviewer out of his criminal compartment to protect his facade of "normalcy."

**Conclusion**

Despite the information used to characterize the various personality disorders above, it is critical to reiterate the risks associated with categorizing offenders. First, personality disorders are not necessarily mutually exclusive, so a suspect might exhibit a mix of characteristics associated with each. Second, personality disorders will range in severity and are not the sole cause of criminal behavior. Many individuals with these personality disorders do not commit criminal acts. Third, investigators may encounter a suspect that does not display any specific personality disorder and may not be easily categorized. For all of these reasons, it is essential that investigators keep an open mind throughout the interview and conduct a thorough and creative investigation.

**Suspect Statements**

The purpose of the suspect interview is to illicit statements that allow the investigator to judge the culpability of the suspect. However, even a well trained investigator may overlook important statements, thereby hampering the success of the investigation. This section examines how to assess suspect statements and thus direct suspect questioning effectively and thoroughly.

**Illustrative Examples**

Imagine that an officer is assigned to investigate a burglary. He interviews the victim, who tells him that she knows who committed the crime -- it was one of the victim's friends. The officer then interviews the suspect, and he admits that he broke into the victim's home and took the victim's property. For all practical purposes this statement has guaranteed that the suspect will be prosecuted.

Now imagine that this same officer is assigned to investigate a sexual assault. He interviews the victim, who tells him that she knows who raped her -- it was the victim's boyfriend. The officer then interviews the suspect, and he admits that he had sex with the victim. However, unlike the burglary investigation, prosecution is not guaranteed. In fact, the case may have actually become more difficult to prosecute. This is particularly true if the suspect claims that the victim consented to have sex with him. When the suspect raises the issue of consent, the focus of the investigation changes from a question of who committed the crime to whether a crime was committed at all.

Consent is a defense that is unique to sexual assault prosecutions. While it is theoretically possible for the burglary suspect to raise the issue of consent, this defense is unlikely to succeed: "Yes, I broke into the house and took the stuff, but the owner wanted me to." This is because the public in general is not prepared to believe that someone would allow another person, even someone they know, to break into their home and take their property.

However, in the case of sexual assault it is not enough for the successful investigator to elicit a statement from the suspect that the sexual act occurred. The officer must also ask questions
that will elicit information pertaining to the element of force or threat that are assumed to preclude the victim's consent.

**Exoneration vs. Confession**

Frequently investigators are asked if the suspect in a particular case confessed. However, experienced investigators know that rather than conclusively establishing a suspect's innocence or guilt, most statements fall on a continuum that ranges from exoneration to confession.

- **Exoneration:** A statement from a suspect exonerates him when he both denies committing the offense and can provide verifiable information that establishes the impossibility of his involvement. For example, if a suspect is accused of sexual assault he would be exonerated by both denying that he committed the crime and also by proving that he was incarcerated when the assault occurred.

- **Confession:** A confession is a statement in which the suspect admits committing all the elements of the offense, raises no affirmative defenses or mitigating factors and provides investigators with previously unknown information or evidence about the crime. For example, in a case in which the suspect is accused of raping a woman in his apartment, he could confess by both admitting that he forced her to have sex with him and by providing the investigators with a videotape he secretly made recording the sexual assault.

Most suspect's statements fall short of meeting the criteria for either exoneration or confession. It therefore falls to the investigator to decide where the statement lies on the continuum, by determining whether the offender's statement is exculpatory or incriminating.

**Exculpatory vs. Incriminating Statements**

- **Exculpatory Statement:** This type of statement acts to clear one of blame. It does not necessarily exonerate a suspect completely, but it provides a piece of information that challenges the idea that he committed the crime as described by the victim or other witnesses.

- **Incriminating Statement:** This type of statement involves a suspect in a wrongful act/crime. It is not likely that a suspect will offer a full confession, thus incriminating statements are those that either support the victim's story or catch a suspect in a lie.

To illustrate the difficulty that sometimes arises when evaluating a statement to determine whether it is exculpatory or incriminating, consider the following:

- The suspect denies being with the victim when she claims she was sexually assaulted.

- The suspect admits to having sex with the victim and to hitting her.

These statements could be either exculpatory or incriminating depending on what other evidence the investigator has discovered. It is critical to keep in mind that no suspect statement "stands alone" and must be viewed in the context of all the evidence.

- Although the first statement might initially appear to be exculpatory because the suspect is denying involvement, it could actually be incriminating if there is evidence that proves the suspect had sex with the victim, and/or witnesses who will testify that they were together. Thus, this statement becomes incriminating by using other evidence that proves the suspect is lying. This type of incriminating statement is frequently overlooked.
In contrast, the second statement initially appears to be incriminating because the suspect is admitting to both sexual involvement and physical violence. However, the statement could be considered exculpatory if the suspect says: "We had consensual sex. When we finished, I started to leave and the victim became upset. We started fighting, she hit me and I hit her back." This statement is exculpatory because it provides a reasonable alternative account of the events. It explains the presence of DNA and the victim’s injuries, without admitting to the elements of sexual assault. However, when an investigator obtains this kind of statement, it should never be taken simply at face value. This type of statement should always be investigated to determine if it is an accurate account or a clever excuse.

The bottom line is that any statement can be deemed exculpatory or incriminating only in the context of other evidence, including the victim’s account. Officers must therefore be vigilant during interviews with suspects, to determine whether any statement is exculpatory or incriminating when considered along with other evidence in the case.

**Provable Lies, Implausible Accounts of an Incident, and Partial Admissions**

When determining whether a given statement is incriminating, when considered in the context of other evidence, it is important to keep in mind that incriminating statements may include provable lies, an implausible account of an incident, and/or partial admissions.

- Suspects tell several different types of provable lies, such as a statement of fact that can be disproved by evidence. For example, if the suspect states that he never had sex with the victim, this can be shown to be untrue with a DNA test. A second type of provable lie is a contradiction in the suspect’s account of events. When required to give repeated detailed accounts of an event, the suspect’s summary of the incident might change from version to version. One or two minor variations will not be incriminating, but when the suspect’s account is riddled with contradictions, it can be used to destroy his credibility.

- An implausible account of an incident may also constitute an incriminating statement. When unexpectedly confronted with an accusation, some suspects will attempt to explain the evidence with a convoluted portrayal of the event. The more complex an explanation, the less likely it is to be true, and the more likely the investigator will recognize the suspect’s explanation as an attempt to explain away unfavorable facts.

- A partial admission may also be an incriminating statement. A partial admission is a statement in which the suspect admits to some but not all of the elements of the crime. For example, a suspect might say that the victim said "no" and struggled to get away when he initially requested sex, but explains that she then later changed her mind and consented to have sex. Good investigators follow up on a partial admission with additional questions to elicit more incriminating information. In this case, the investigator might ask how the suspect knew the victim changed her mind. The suspect might say, "She stopped struggling." This statement is incriminating because most jurisdictions no longer equate compliance with consent.

**Techniques to Encourage Additional Details**

Regardless of which type of incriminating statement is offered by a suspect, every effort should be made to elicit as much detail as possible. Often seemingly unimportant details can provide necessary links to other pieces of evidence or information, or they can be used to uncover
inconsistencies in previous or subsequent statements. Techniques to encourage additional details from the suspect follow.

- It is not advisable to challenge lies offered by the suspect. Rather, suspects should be allowed to develop them and add details to them. Often, the details can later be used to dismantle the lies, and may increase the likelihood of an admission. Further, a well-documented lie can sometimes be very powerful evidence for prosecution.
- Investigators should encourage the suspect’s excuses or justifications (denial). Perpetrators of sexual assault often need to protect their egos, so "going along" with this conversation may result in an admission.
- It is also important to consider the offender's motives and rationalizations. Most sex offenders rationalize their behavior to justify their actions or deny the allegations. A common rationalization is entitlement: "I paid for dinner," "This is my girlfriend/wife," etc. Another offender may rationalize that the victim "disrespected" him. For example: "I gave her drugs, so she owed me sex." By encouraging these rationalizations or otherwise "playing along," the suspect may be encouraged to provide additional details to his account of events.

Refer to the supplemental materials entitled, "Interviewing and Interrogating Sexual Assault Suspects," by John E. Reid and Associates for additional information on offender rationalizations and developing themes during the suspect interview.

It is important to note that the investigator's interview with the suspect is not the only source of incriminating statements. Friends and acquaintances of the suspect can be interviewed for incriminating statements made to them, as well as any patrol officer who may have spoken to the suspect.

*Frequently patrol officers do not recognize the incriminating nature of a statement and instead of recording the statement verbatim they will broadly summarize it, thereby limiting its impact at trial. Therefore, it is of the utmost importance that investigators always debrief the patrol officers in detail about any statements made by the suspect to ensure that they are accurately recorded.*

**Conclusion**

Society is predisposed to believing a sexual assault suspect when he uses a consent defense. However, law enforcement can overcome this burden by obtaining incriminating statements from the suspect or others involved in the investigation. In fact, obtaining an incriminating statement frequently means the difference between a conviction and an acquittal. Investigators must know when a statement is incriminating and must be adept at effective interviewing techniques to ensure a credible case and support successful prosecution.
Using Pretext Phone Calls in Sexual Assault Investigation

Introduction

The "pretext phone call" is an investigative tool that can be utilized in a wide variety of criminal investigations. It can be especially effective in sexual assault investigations, including drug-facilitated sexual assault.

In this context, a pretext phone call is simply a tape-recorded telephone call between the victim and the suspect. The call is usually initiated by the victim, under the supervision of a law enforcement officer -- preferably the lead investigator or case agent. The suspect is unaware that the call is being recorded. This technique may be referred to by different terms, including "confrontational calls," "pretense calls," "taping," "consensual taping," "monitored calls," etc.

The purpose of a pretext phone call is to elicit incriminating statements from the suspect. A suspect will frequently talk to the sexual assault victim about the incident if he believes the victim is alone and no one else is listening. The tape recording resulting from an effective pretext call gives the investigator leverage during the subsequent interview of the suspect because the investigator can confront the suspect with the statements the suspect made during the pretext phone call -- statements which were recorded on tape.

Evidence and statements obtained as the result of a pretext call can be powerful evidence in court, and are sometimes key in linking the suspect to the crime. However, depending on the victim and the circumstances, a pretext call can amount to a second victimization, if the victim cannot handle the emotional consequences a pretext call can create.

- Some states have laws that make it illegal to record phone calls. However, some of these states exempt law enforcement officers from these laws when the officer is acting within the scope of his or her official duties. Some states require that court authorization be obtained before recording a call. Investigators must be aware of the legal issues governing such calls in their state.

- Depending on state laws and local policies, an investigator may want to consider having the victim sign a consent form prior to making the pretext call. This form can also include language to protect a law enforcement agency from potential liability in relation to any later claims by the victim, such as claims relating to emotional injury.

Of course, no two cases are alike -- so the issues arising with each pretext phone call will be different. Some suspects are extremely dangerous and associate with other dangerous people. This monograph is merely a set of suggestions for the investigator to consider, however, the foremost consideration must be the safety of the victim. No set of suggestions could address all the safety issues that might arise in a given case. Therefore, as with any investigative step, the investigator should proceed with caution when considering or conducting a pretext phone call.

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21 By Harold Eisenga, Detective, San Diego Police Department, Sex Crimes Unit. Pretext phone calls are also referred to as "confrontational calls" or "monitored calls" in other jurisdictions.
Determine Whether the Pretext Phone Call is Appropriate

It is imperative that the investigator interview the victim in detail before making a pretext call. The information gained from the interview will help the investigator formulate questions for the victim to ask the suspect. The information will also help the investigator analyze the statements made by the suspect during the recorded call. The investigator should be familiar with all aspects of the case, including witness statements.

An effective pretext call can only be conducted if the victim is willing to cooperate. Keep in mind that it may be too traumatic or embarrassing for some victims to converse with the suspect effectively. And, as noted above, when deciding whether to make a pretext call, investigators must consider the emotional effect the pretext call might have on the victim. If the victim is willing to make a pretext call, it might be advisable to have a counselor or victim advocate available to help the victim immediately after the call.

Depending on the circumstances, the investigator might consider having an undercover police officer (or a friend of the victim) pose as the victim for purposes of the pretext call. Obviously, if the suspect knows the victim well, the suspect may detect a difference in the voice - and this could undermine the effectiveness of the pretext call. However, the undercover agent (or friend of the victim) might be able to "explain this away." For example, the undercover officer (or friend of the victim) might "explain" that she has been upset, has been crying, and/or has not been sleeping well.

During the undercover pretext call, the suspect may request the victim's phone number so that he can re-contact the victim. In planning the undercover pretext call, consideration must be given as to what phone number, if any, to give the suspect.

A note of caution: If someone poses as the victim for the purposes of the pretext call, the implications to the victim and the victim's safety must be carefully considered, discussed with the victim, and addressed. For example, after the pretext call, the suspect may attempt to recontact the actual victim; the victim must be prepared for this possibility.

Necessary Equipment

• Standard audiocassette recorder. The recorder should have both a "mic/input" jack (microphone input jack) and an ear plug jack. Handheld recorders work well, as pretext calls are frequently made from locations other than the investigator’s office.
• Ear plug. An ear plug allows the investigator to listen to both parties to the call while the call is in progress.
• A device to connect the tape recorder to the phone for recording purposes -- specifically, a "Phone Recording Control Device" that connects directly between the phone line and the modular jack on the phone. It also plugs into the mic/input jack of the tape recorder. This device is simple to use, and provides dependable recording and excellent audio pick-up of both parties to the call. It can be purchased at electronic equipment stores for approximately $20.
Investigators should avoid using the suction cup devices sometimes used to record calls. The suction cup devices can result in poor quality tapes or worse. In one instance the suction cup device only recorded the voice of the witness working with the police - and not the suspect’s voice.

When to Make the Pretext Call

The "best" time to make a pretext phone call will depend upon the circumstances of the case. A pretext call does not have to be initiated immediately; indeed, it can be initiated days, weeks, or even months after the incident. In some instances, a long delay may cause the suspect to think he "got away with it," and he might be more willing to talk about the incident. Depending on the circumstances, multiple pretext calls may be appropriate.

- In lengthy investigations, investigators should consider initiating the pretext call on a date that coincides with the "anniversary" date of the crime or on some other date on which the suspect might be thinking about the victim. For example, if the suspect knows the victim well, the victim might call the suspect on the victim’s birthday.

- Preferably, a pretext call should be made before the suspect becomes aware of the investigation. However, even if the suspect knows of the investigation, a pretext call may be an appropriate tactic, especially in cases where the evidence is not yet strong enough to obtain a conviction.

  When an attorney represents a suspect, the legal principles applicable to contacts with represented persons must be followed. Under such circumstances, no direct or indirect contact with the suspect should be undertaken by law enforcement -- or anyone working under the direction or control of law enforcement -- without the express authorization of a prosecutor.

- If an investigator is concerned that the suspect would immediately think that a phone call from the victim must be some kind of trap, the call should be made on a weekend or late at night, when the suspect might be off guard and less suspicious.

If the resources are available, a surveillance team can be used to survey the suspect’s house and learn when he normally returns home from work. Then, on another day, the surveillance team can be in place when the victim is ready to place the call. When the surveillance team reports that the suspect has just returned home, the victim can then place the call. This procedure may minimize the stress and inconvenience of making a pretext call, only to learn that the suspect is not at home. Also, calling the suspect the moment he gets home from work might catch the suspect off guard. Finally, by using this procedure, the surveillance agents can testify that the suspect was home at the time of the call - and, thereby, provide additional evidence that it is the suspect’s voice on the tape.
Preparing for the Pretext Call

In sexual assault cases, the victim frequently knows the suspect and pretext calls can be effectively utilized. If the suspect is a complete stranger to the victim, however, a pretext call may not be possible -- the suspect may wonder how the victim got his phone number and become suspicious. However, if there is not yet enough evidence to obtain a conviction, investigators might decide that there is nothing to lose by trying. With creativity, moreover, many potential problems can be eliminated. For example, a victim that is unknown to the suspect may tell him that he is actually known to a "friend of a friend," who gave her his number.

- Investigators should always prepare a list of questions and statements the victim can say to the suspect that will encourage the suspect to talk about the incident. This list should then be reviewed with the victim. The victim must always understand the purpose of the call, which is to obtain incriminating statements by the suspect. Questions and statements can then be developed in anticipation of what the suspect may say to the victim (e.g., admissions, denials, apologies, and evasiveness). These questions should be listed on paper so the victim can refer to them during the call; this is critical because many victims become nervous during the call and forget what to say. Victims should be reminded to let the suspect do most of the talking, and to avoid interrupting him.

- To help prepare the victim for the possible responses by the suspect, investigators should practice or "role play" the questions with the victim. This will help the victim avoid sounding like she is reading from a script during the call. The practice sessions should be as close to the "real thing" as possible -- even to the extent of having the victim call the "suspect" (the investigator) on a different line and the investigator responding in the different ways the suspect might respond. The more the victim practices under "battle conditions," the better prepared she will be to effectively conduct the pretext call.

- During the pretext call the victim should avoid harsh, accusatory questions like, "Why did you rape me!?!" A suspect's usual answer to this type of question is, "I didn't rape you." A suspect may admit he took advantage of the unconscious victim, but he doesn't want to be associated with the likes of a "rapist" or a "criminal." Instead, the victim might ask the suspect something like:
  - "Why did you have sex with me after I pushed you away and told you to stop?"; or
  - "You knew I was out of it and didn't know what was going on, but you had sex with me anyway. Why?"

- This type of question is more likely to elicit an incriminating statement. Victims should be advised to avoid nebulous questions like, "Why did you do it?" Rather, they should be more specific. A lack of denial by the suspect may be as incriminating as an admission.

In some jurisdictions, the laws of evidence have a specific term to describe evidence which establishes that someone failed to deny an accusation under circumstances which called for a denial had the person been innocent. The term for that evidence is an "admission by silence." See, for example, United States v. Aponte, 31 F.3d 86, 87 (2d Cir. 1994).
• Under the circumstances, it may be in the public interest for the victim to make misrepresentations to the suspect. For example, if the suspect asks the victim if she told the police what happened, she can tell him, "No." However, the victim should not make threatening statements like, "If you don't admit you raped me, I'm going to call the police and have you arrested."

• When planning a pretext call, investigators should arrange to place the call from a location that is well suited for that purpose. For example, some law enforcement agencies have automatic answering devices on their non-undercover phone lines -- devices that, among other things, inform the caller that he has reached the law enforcement agency. Because some suspects use "Caller ID" and automatic return calling, such non-undercover phone lines should not be used. In most cases, the call can be made from the victim's residence.

• Finally, the victim should not be under the influence of alcohol or drugs that could affect her judgment, thought processes, or emotional stability during the pretext call.

Making the Pretext Call

The following is a short checklist to consider when making the pretext call.

• Investigators must ensure that there is nothing in the room to distract the victim, such as unnecessary persons or ringing phones. All police radios, cellular phones and beepers should be silenced. Similarly, anything that could cause noise or electronic interference should be turned off, such as public address systems, fish tank motors, etc.

Investigators must ensure that the victim is prepared for the various possibilities when placing a call. For example:

• The pretext call may be "answered" by an answering machine;
• The line might be busy;
• The suspect may have "call waiting" and answer the pretext call while placing someone else on hold;
• Someone other than the suspect may answer -- and the suspect may or may not be home;
• The suspect himself may answer -- but other persons may be in the room with the suspect or the suspect may have visitors;
• The suspect himself may answer -- and he may be alone; or
• The suspect himself may answer -- and he may be alone -- but he may report that he doesn't have the time to talk right then because he has to go somewhere.

The investigator should also prepare the following:

• If the recorder is battery operated, fresh batteries should be installed.
• Recording equipment must be attached to the phone, and tested to make sure it is working properly.
• The earplug must be attached to the recorder so the investigator can "listen in" on the call.
• The investigator should record an introduction on the tape to document the date, time, case number, victim's name, etc.
• Before placing the call, the investigator should double check the recorder to make sure it is turned on and placed in the "record" mode.

When the victim contacts the suspect, the investigator should listen carefully to both sides of the conversation and assist the victim by pointing to questions on the list that the victim should ask the suspect. It is helpful for investigators to have a note pad handy to jot down additional questions that come to mind as the conversation develops -- questions that the victim can pose to the suspect during the conversation.

Usually a pretext call will not last longer than thirty minutes. During this time, the victim should remain focused on talking about the incident. If the conversation drifts too much into other areas, the result may be a tape with little evidentiary value. Once the call is completed, the tape becomes evidence and should therefore be handled with the same care as any other piece of physical evidence.

Other Considerations

If a pager number is the only one available for a suspect, it may be necessary for police to wait with the victim by the phone until the suspect calls back. If the wait is too long, it is possible to install the recording equipment on the victim's phone and leave it with the victim in case the suspect calls her at a later time. In this situation, the victim records the call as an "agent" of the investigator -- a procedure that is legal in some states but not in others. Investigators must therefore determine the legality of this procedure in their jurisdictions.

If a recorder is attached to the victim's phone and left with her:
• The victim must be provided thorough instructions on how to operate the recorder

    For evidentiary purposes, recording devices should be carefully tested and the victim thoroughly instructed in their use - - then these procedures should be documented in the police report.

• If the victim has more than one phone, she will need to remember to pick up only the phone that is connected to the recording device. Otherwise the victim will need to give an excuse to the suspect to explain why she needs to "change" phones.

    If the victim disconnects all her phones except the one with the recording device, the victim will not have to worry about picking up the "wrong" phone.

Again, the victim's emotional state must be considered when deciding whether she is capable of talking to the suspect without the presence, support and assistance of a police investigator.

Perpetrators have been known to initiate contacts with their victims. If this is a possibility, investigators might consider attaching the recorder to the victim's phone as soon as possible to record the suspect's calls. Even if the suspect has already been arrested for the rape, it might be advisable to attach a recorder to the victim's phone if there is any reason to believe that the suspect -- or his associates -- may try to call her.
If there is a possibility that the suspect or one of his acquaintances may visit the residence of the victim, consideration must be given to hiding the recording equipment. This situation could arise in a variety of circumstances -- particularly where the victim and the suspect are acquainted, have friends or acquaintances in common, or are members of the same family. This recommendation is intended to address the safety of the victim -- and is not a recommendation that the victim try to record a face-to-face conversation with the suspect, which may present practical problems, safety concerns, and legal issues.

If the victim is able to complete the pretext call, the tape must be retrieved as soon as possible to prevent loss or accidental destruction -- and to minimize evidentiary challenges relating to alleged tampering or chain-of-custody issues. Otherwise, normal chain-of-custody procedures should be followed.

Conclusion

Pretext calls have helped in a number of investigations that ultimately resulted in convictions. Some of these cases would not have been prosecuted were it not for the statements the suspect made to the victim during the pretext call. Pretext phone calls therefore represent one important tool for sexual assault investigators. However, they must be conducted with the utmost consideration of victim safety and well-being, and careful attention to detail.

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