

# Unfounded Cases and False Allegations

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## **False Allegations: The Elephant in the Living Room**

In traditional law enforcement training programs for sexual assault investigation, the concept of false allegations is the “elephant in the living room.” Imagine the following scenario:

*Instructors provide training on how to successfully investigate sexual assault cases while participants listen attentively and take notes on topics like victim sensitivity, suspect typology, and evidence collection. All the while, everyone in the room shares the view that training material is only relevant for the “real” cases that find their way into the department. The training does not challenge anyone (including the instructors) to examine their underlying categorization of cases into those that are “real” versus something else – cases that are murky, ambiguous, or just plain fabrications.*

The present module is designed to change this practice by delving meaningfully into the question of false allegations. We will attempt to answer those questions that have historically created a bigger hurdle for sexual assault victims than any lack of training or experience on the part of officers. These questions include:

- What do we mean by “false allegation?”
- How many sexual assault reports are estimated to be false?
- How does terminology confuse the issue of unfounding versus false allegations?
- How unfounding is used for cases that don’t meet the stereotype of “real rape.”
- How unfounding is used for “difficult” cases.
- What are the consequences of improperly unfounding sexual assault cases?
- How improper unfounding fuels the myth of false allegations.
- The “shell game” of noncriminal codes
- How can police “create” an unfounded case?
- How can officers counter the “cycle of distrust” that harms both police and victims?
- What are appropriate procedures for unfounding and administrative closure?
- How to handle the frustrating reality of false allegations.

Ultimately, a poorly trained investigator who believes the victim and takes the case seriously is eminently preferable to a well-trained investigator who nonetheless thinks that most sexual assault allegations are false. The goal of this curriculum is to address these issues, hopefully preparing officers both with specific training as well as the view that the training content is relevant for every sexual assault case.

### **What do we mean by “false allegation?”**

As others have noted, the definition for false allegations is imprecise, and this creates confusion when discussing the issue or attempting to estimate its prevalence.<sup>1</sup> For example, many attempts

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<sup>1</sup> Aiken, 1993

to define what is and is not a false allegation have rested on the motivation of the complainant. Several definitions have required that the motive for a false allegation must be deliberate deception,<sup>2</sup> yet this is clearly not required for a charge to be baseless. A false allegation of sexual assault could be forwarded without deceit but rather due to mental illness or simple mistake (i.e., the individual believes that she was sexually assaulted when she was not).

Another critically important issue in this arena is “how false” an allegation needs to be to be considered a “false allegation.” As Aiken (1993) articulates:

*Must the entire allegation be false to be considered a false allegation? How false must it be? Is it more serious to make false accusations against a person than to falsify other aspects of a crime?*<sup>3</sup>

This issue has been previously discussed in the module on victim interviewing, but it also requires attention here. That is, many victims will give inconsistent or untrue information as part of their statement, but this should not be confused with a false allegation.

- For example, victims might give inconsistent or untrue information out of trauma or disorganization, discomfort relaying sexual details, fear of being doubted or blamed, or out of an attempt to make the assault sound more like the stereotypic “real rape” with which we are all familiar.

#### *How to address inconsistent or untrue statements*

Unfortunately, these inconsistencies or untruths can destroy the victim’s credibility if not handled appropriately by police. As we discussed in the module on victim interviewing, there are a number of steps that investigators should take in the event of inconsistencies or suspected untruths in the victim’s statement:

- First, it is critically important that officers realize that these inconsistencies or untruths are understandable and should not be confused with a “false” allegation.
- Investigators should then address inconsistencies or untruths in the victim’s statement by exploring the issue gently and nonjudgmentally. Specific guidance for how to do this is provided in the module on victim interviewing.

If the inconsistency seems to result from the victim’s attempt to make her assault sound more like “real rape,” officers should address her underlying fear of being doubted or blamed. Again, specific guidance is provided in the module on victim interviewing but it is critical that the

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<sup>2</sup> Aiken, 1993; Katz & Mazur, 1979

<sup>3</sup> This paragraph is a direct quote from Aiken, 1993, p.16

investigator create a safe, nonjudgmental environment that encourages honesty even for unflattering or illegal behavior.

*So how false does a false allegation need to be?*

Given the many reasons for doing so, it is understandable and perhaps even inevitable that victims will often make inconsistent or untrue statements about their assault. However, many investigators and others have mistakenly concluded on this basis that the entire allegation is false. For example, in her article on the topic, Aiken (1993) defines a false allegation as a claim that is deliberately deceitful about any significant aspect of the assault. Based on this definition, the author provides the following as case examples for false rape allegations:

*Toni was asleep at home when she was awakened by someone's presence next to her bed. A masked man was standing there holding a knife. He threatened her with the knife and forced her to have vaginal sex with him. He also forced her to perform fellatio. After he left, she immediately called the police. In her statement, she denied engaging in oral sex because she felt shame and guilt.*

*Patricia was a drug addict. She would do almost anything to support her habit. She made arrangements to buy some crack from her dealer. She met him at the appointed time and place. In the course of the transaction there was a disagreement over the terms of the sale. The dealer physically assaulted Patricia, dragged her behind a vacant house, and forced her to have sex. Patricia reported the incident to the police, completely omitting the details of the drug deal.*

*Kathryn lived alone and was sexually assaulted by her neighbor. He forced her to have vaginal and oral sex with him. Kathryn had always feared this man. He threatened to kill her if she reported the assault. She also was afraid of venereal disease. To secure free medical services, she reported the incident to police. She described her assailant as a masked stranger and denied the oral act.<sup>4</sup>*

The characterization of these cases as "false allegations" is not only incorrect but also troubling. In the first instance, the victim omitted details of certain sexual acts out of shame. In the second, she omitted details of her own drug use in order to bolster her perceived credibility, and in the third she failed to provide the identity of her assailant out of fear for her life. These case examples are not really false allegations. These are cases in which the victim omitted or distorted information about the assault, but they do not negate the reality that the assault happened.

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<sup>4</sup> These case examples are quoted directly from Aiken, 1993, p.19

A better characterization of this type of case is provided by Chula Vista Police Department detective John McAvenia:

*Several cases in recent years involved victims saying that while enroute home from a party they were dragged into some bushes by a stranger and raped. They would forget to rub leaves or grass onto themselves like some outright liars would do, causing reporting officers to think something was not quite right. When the investigations were complete it usually turned out the victims were in fact raped – but at a party by someone they knew and trusted. While the product of embarrassment, not malice, these inconsistent statements can destroy the case. Do these cases teach us that sex crimes victims are liars? Of course not. They do teach us, however, that besides being the victim of a crime – like people who are victims of robbery and burglary and theft – these victims perceive an additional stigma because the crime is sexual in nature and because, in some cases, they are apprehensive about their own conduct before the attack. And that stigma causes them to alter their stories.<sup>5</sup>*

### *Conclusion*

Clearly, there are a number of interpretations of what constitutes a false allegation, but the most reasonable definition is that it is a claim of sexual assault where the elements of sexual assault are not met. The false allegation could be made out of deliberate deceit, fantasy, or mistake. For example, an unwanted sexual act may have taken place that simply did not meet the legal definition for sexual assault.

- However, “false allegation” should not be used to refer to cases in which the assault took place but the victim provides inconsistent or untrue information within the context of her statement.
- Cases in which the victim provides partial or distorted information are certainly difficult to investigate, but they should not be considered false unless there is evidence to prove that the assault simply did not occur.

Rather, “all complaints must, of necessity, be taken at face value and, unless there is some specific reason to believe otherwise, handled accordingly.”<sup>6</sup>

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<sup>5</sup> McAvenia, 1997, p.7-8

<sup>6</sup> McDowell & Hibler, 1987, p.284

### **How many sexual assault reports are estimated to be false?**

Estimates for the rate of false reports have varied widely, virtually across the entire possible spectrum. This is not surprising given the differences in definition presented above, in addition to the different ways of determining a complaint to be false and recording it. For example, Kanin's (1994) review of estimates provided over the years ranged from lows of 0.25%<sup>7</sup> and 1%<sup>8</sup> to 80-90%.<sup>9</sup> Kanin himself reported a rate of 41% for one midwestern police agency and 50% for two college campuses studied.<sup>10</sup>

- In an informal survey conducted at the Denver Metropolitan Area Police Department, detectives from the same agency provided estimates ranging from 5% to 65%.<sup>11</sup>
- In another informal survey conducted with participants at a conference including law enforcement, victim advocates, and other criminal justice personnel, the estimates varied even more widely, from 0% to 98%.<sup>12</sup>

Clearly, there are huge differences in the estimates given for the rate of false reporting. This situation suggests that the discrepancies are caused not only by differences in perception and terminology, but also in how the information is gathered and how a report is determined to be "false." One of the primary sources of confusion stems from the terminology of "unfounding" versus "false allegations."

### **How does terminology confuse the issue of unfounding versus false allegations?**

Because the issue of false allegations is the "elephant in the living room" of sexual assault investigation, it is the single most difficult issue to overcome in training. This problem is made worse by the fact that the terminology used to refer to false allegations is often confused with that for unfounding or other administrative forms of clearance.

Federal reporting requirements in this regard are clear – a case is only to be unfounded if it is determined – after investigation – to be false or baseless. This does not include cases that are closed because an arrest is not made or the victim refuses to cooperate.

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<sup>7</sup> O'Reilly, 1984

<sup>8</sup> Krasner et al., 1976

<sup>9</sup> Bronson, 1918; Comment, 1968

<sup>10</sup> Kanin, 1994

<sup>11</sup> Presentation to COVA by M. McNally, J. Bennett, and A. Munch.

<sup>12</sup> Presentation to COVA by M. McNally, J. Bennett, and A. Munch

The issue is further complicated by the fact that departments often use unfounding to close cases for reasons other than the determination that they are false or baseless.<sup>13</sup> In practice therefore, “unfounded rape can and does mean many things, with false allegation being only one of them, and sometimes the least of them.”<sup>14</sup> Other factors commonly used as a basis for improperly unfounding a case include:

- The police are unable to locate the victim.
- The victim decides not to follow through with prosecution.
- The victim repeatedly changes the account of the rape.
- The victim recants.
- No assailant can be identified.<sup>15</sup>

In none of these situations is it assumed that the sexual assault did not occur, yet these cases are often improperly unfounded because they need to be administratively closed – and many departments inappropriately use unfounding rather than inactivating to do so. There are also a variety of other situations that impede or prevent completion of the investigation and in which cases are often improperly classified as “unfounded.”<sup>16</sup>

- Unfortunately, cases are sometimes seen as unfounded when the victim "changes her story" by recalling additional information, telling different aspects of the same story, or making inconsistent statements out of trauma and cognitive disorganization.<sup>17</sup>
- Cases are also viewed as false when the victim recants, either out of fear<sup>18</sup> or when she realizes the impact that the investigation and prosecution will have on her life.

Thus, there are clearly a number of situations in which sexual assault cases are improperly unfounded when they have not been determined to be false.

### **How unfounding is used for cases that don't meet the stereotype of “real rape.”**

Another reason why many cases are improperly unfounded is because they are viewed with suspicion that is not grounded in investigative facts but rather due to particular characteristics of the case or victim. As we've discussed at great length, sexual assault cases are often viewed with suspicion when they do not meet the cultural stereotype of “real rape.”

- For example, police and the public often view with suspicion any claims of sexual assault made when the victim and suspect knew each other, especially if there was a prior sexual

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<sup>13</sup> Aiken, 1993

<sup>14</sup> Kanin, 1994, p.81

<sup>15</sup> These points are quoted directly from Ledray, 1999, p.4

<sup>16</sup> Aiken, 1993

<sup>17</sup> Ledray, 1999

<sup>18</sup> Ledray, 1999

relationship, if the victim delayed reporting, and if the victim did not describe either physical resistance or violence/weapons used by the suspect.

As presented in the chapter on dynamics, however, it is completely inappropriate to use these characteristics as reasons for doubting the validity of a sexual assault claim.

- The fact is that most sexual assault victims know their attacker, most delay reporting (or never report), most do not use physical resistance, and most suspects do not resort to physical violence or use of a weapon.
- These characteristics should thus not be confused with a “false allegation” and should never be used as the basis for unfounding a sexual assault case.

Despite this fact, we know that departments do use such characteristics as the basis for unfounding sexual assault cases. For example, there is evidence that in many jurisdictions, officers can declare a complaint unfounded in the initial report or following a routine, cursory investigation. These determinations are not made on the basis of investigative facts but rather on stereotypes of “real rape” that create undue suspicion of cases that are actually typical in their characteristics.

- Thus, even in cases where victims sustained bruises, black eyes, cigarette burns and bitten nipples, some officers have declared complaints unfounded if there was a previous sexual relationship between the parties.<sup>19</sup>

Clearly, it is inappropriate for departments to use unfounding as a mechanism for administratively closing sexual assault cases, simply because they are inappropriately viewed with suspicion.

### **How unfounding is used for “difficult” cases.**

Even when cases are seen as legitimate, they are often improperly unfounded because they are just plain difficult. Cases can be difficult when the victim refuses to cooperate with the investigation or fails to appear for interviews or other court proceedings. Cases are also difficult when the victim has characteristics that will undermine her credibility in court, including drug use, prostitution, a criminal history, etc. Yet none of these are legitimate reasons for unfounding a sexual assault case. Despite this fact, there are many examples of departments routinely using unfounding as a mechanism for improperly closing “difficult cases.”

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<sup>19</sup> Hecht-Schafran, 1993



### *The case of Oakland Police Department*

Consider the case of Oakland Police Department, which came under fire in 1990 for the practice of routinely unfounding sexual assault cases as a means of avoiding serious investigative effort.

As excerpted from *Law Enforcement News*:

*An internal audit of 203 “unfounded” rape complaints from the last 18 months revealed that 108 had been improperly classified, said Capt. James Hahn, the head of the Criminal Investigation Division, who conducted the audit. For the most part, these cases involved prostitutes, drug abusers, or victims who refused to cooperate, Hahn said. Those are not sufficient reasons for classifying a case as unfounded under the Federal Bureau of Investigation’s Uniform Crime Report guidelines, Captain Hahn said. Last year, one-fourth of all rape complaints in Oakland were categorized as unfounded.” Candidly, we blew it,” said Police Chief George Hart. Hahn attributed the lapse in handling cases to understaffing and the “cynicism that begins to creep in” when an officer handles hundreds of cases each year. Oakland has the seventh-highest rape rate in the nation – 120 per 100,000 people. Last year, 585 rapes were reported to the department. But the sexual assault unit has an authorized strength of only six officers, and in the last several years, only three or four officers have been assigned to the unit, Hahn said. Many of the cases improperly classified as unfounded would have been unusually difficult to investigate, Hahn said. For example, many of the complainants had refused to be taken to a hospital for a medical examination where evidence could have been gathered, had failed to keep appointments with investigators, or had given police an alias. And the cases involving prostitutes or drug addicts are difficult to prove in court, he said. “But just because a case is going to be hard to prove doesn’t mean you classify it as unfounded,” Hahn added.”<sup>20</sup>*

### **What are the consequences of improperly unfounding sexual assault cases?**

Unfortunately, the consequences of improperly unfounding sexual assault cases are tragic -- for police, victims, and the public.

- For police, high rates of unfounding can lead to scrutiny and public pressure to change their procedures. For example, pressure from the media and the public in Oakland led to the police department’s reopening of the 203 rape cases that were “dropped without even minimal investigation...including 37 in which the victim was never interviewed.”<sup>21</sup>
- For victims whose cases are improperly unfounded, this practice creates a sense of betrayal and distrust that can have devastating effects on victim recovery. Moreover, the public awareness that sexual assault cases are not taken seriously will inevitably affect the willingness of future victims to report to police.

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<sup>20</sup> *Law Enforcement News*, 1990, 21(19), p.6

<sup>21</sup> *Law Enforcement News*, 1990, 16(322) , p.5

On a larger scale, improperly unfounding sexual assault cases represents a miscarriage of justice and threat to public safety. As Marcia Blackstock, executive director of Bay Area Women Against Rape concluded, the Oakland P.D. practice of unfounding difficult cases served as a means of avoiding investigative responsibility. "If you get a good investigation behind it, you can still get those cases charged and convicted. It doesn't make her less of a victim because she's using drugs and it doesn't make the rapist less of a threat to society because he's raping women who are on drugs."<sup>22</sup>

Other consequences for the public include the false sense of reality created when departmental statistics indicate that the rate of sexual assault is lower and clearance rates higher than they actually are. For example, many police departments and college campuses place great emphasis on keeping crime statistics low, and this can put pressure on officers to make sexual assault cases "disappear" by improperly using noncriminal codes or unfounding.

### **How improper unfounding fuels the myth of false allegations.**

Perhaps the most tragic consequence of routinely unfounding sexual assault cases, however, is that it fuels the myth that a high percentage of cases are determined to be false. The idea that women lie about rape is one of the most fundamental myths that has devastating consequences for victims when they seek support from friends, family, social services, and the criminal justice system. By improperly reporting cases as unfounded to the FBI -- and then having many members of society confuse "unfounded cases" with "false allegations" -- these inaccurate statistics create the sense that a higher percentage of sexual assault cases is deemed to be false compared with other types of cases.<sup>23</sup>

- For example, the rate of unfounded sexual assault cases was 8% in 1995 and 15% in 1996, compared with 2% for all other index crimes.<sup>24</sup>

However, when an effort is made to sort out unfounded cases from those that are deemed to be false, the picture is quite different.

- To illustrate, when the Portland, Oregon police department examined the 431 complaints of completed or attempted sexual assault in 1990, 1.6% were determined to be false. This was in comparison with a rate of 2.6% for false reports of stolen vehicles.<sup>25</sup>

This issue is perhaps most eloquently articulated by retired NYPD sex crimes investigator Harry O'Reilly (1984):

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<sup>22</sup> quoted in *Law Enforcement News*, 1990, 16(322) p.11

<sup>23</sup> Aiken, 1993

<sup>24</sup> *Uniform Crime Reports*, 1996

<sup>25</sup> Hecht-Schafran, 1993

*The last myth I want to deal with is that of false accusations. Do we really have women running around making false accusations against innocent men? Does this happen? Are there false reports? Of course there are, and we must always be on the alert and be aware that victims may be telling a lie. Some women do lie, of course, but the number of women who make false reports is negligible in comparison with the number of valid complainants. In a six-month period in New York City there were around 2000 reported rapes, of which about 250 were unfounded reports. But 'unfounded' does not mean lying. Let's see what it means: 200 of the 250 were simple administrative errors. They should never have been called rapes in the first place; for example, a woman phones the station and yells rape. The police car goes out and there's no one home. The next day a detective goes to follow the incident up and the woman says "Oh yes, my boyfriend and I had a fight last night and I yelled "rape"". 'Why did you yell rape?' 'Because if I had yelled disorderly conduct, nobody is going to come, but if I yell rape I know damn sure that a cop is going to come in a hurry.' That kind of thing is not a false rape charge, but a mild inconvenience to the police.*

*We are therefore left with potentially 50 liars out of a total of 2000 complainants. Of that 50, perhaps 20 cases of false report were made as some kind of attempt by the woman to protect herself against a tyrannical father or husband because she had violated some family rule, usually a time curfew, and she has to account for why she is late. Rarely in these cases, however, does she accuse a specific person; rather, she claims that some mysterious figure in the night pulled her into a car and did this awful thing to her and caused her to be two hours late in coming home. Other times we have women who have psychological problems, loneliness being the main one, and they know if they say 'rape' the officer will come and talk with them awhile. These women have lied, of course, but no more maliciously than has the woman with the tyrannical husband/father.*

*After analyzing all the 'unfounded' reports, we found that there were actually only five cases of women maliciously telling lies and deliberately falsely accusing men of rapes that had never been committed. In these cases the women are arrested for making false accusations – false charges are crimes which must be punished. the bottom line, then is that out of 2000 charges of rape, there were five proven liars. That is good enough evidence for me to conclude that most victims are telling the truth! (p.96-7).*

### **The “shell game” of noncriminal codes**

Just as Oakland Police Department came under fire for improperly unfounding sexual assault cases, other departments have received scrutiny for using noncriminal codes as a dumping ground for cases that are seen as suspicious or difficult. For example, Philadelphia Police Department received considerable pressure in 1999 to change the “shell game” that has been practiced for decades with sexual assault cases. Prominent in this story is the use of “investigation of person,” a noncriminal code that was never intended for use with sexual assault – or any other criminal -- cases. Again, the consequences of this practice are tragic for victims, police, and the public.

As excerpted from the *Philadelphia Inquirer*:

*Bureaucratic ruses such as "investigation of person" are only part of the story of how the rape squad polished its numbers at the expense of victims and the public. In the early 1980's, police rejected as "unfounded" – or groundless – half the complaints they received, according to confidential FBI documents obtained recently by The Inquirer under the Freedom of Information Act. That rejection rate was five times the national average. The proportion of cases deemed "unfounded" fell when the unit, under pressure from the FBI to stop rejecting so many complaints, began disposing of tough cases in "investigation of person." Two years ago, the FBI and departmental auditors questioned the use of the code. Sex-crimes investigators backed off "investigation of person" and began again "unfounding" large numbers of cases. In a single year, the unfounded rate doubled – to 18 percent for 1998. That was twice the national average and the highest rate among the 10 largest cities in America. [Police Commissioner] Timoney said in an interview last week that his "complete reorganization" of the sex-crimes unit had ended statistical manipulation for good. He appointed a new commander, improved training, renamed it the Special Victims Unit, and assigned detectives to the squad for the first time. "By and large, those 2701's ["investigation of person" codes] have almost disappeared," he said. Yet the Inquirer found that the numbers game has continued in a new guise – albeit on a smaller scale. The rape squad dramatically reduced its use of "investigation of person" last year. The wholesale dumping of complaints has been replaced by a more selective use of a different noncriminal code – "investigation, protection, medical examination."<sup>26</sup> Over the last two years, the Special Victims Unit has put 400 complaints – about 5 percent of its caseload – in an administrative way station called Code 2625, "investigation, protection and medical examination." It is a "non-offense" code not intended to designate crimes – much less a crime as serious as rape... Code 2625...was once used for cases in which police picked up teenage runaways. But that hasn't been a crime for 22 years. In 1977, running away from home was decriminalized by the state legislature, and Code 2625 no longer had any use as a crime category. By the 1990's, it had all but disappeared from police records. Then, in the last three months of 1997, it surfaced again. Thirty cases – all of them handled by the sex-crimes unit – were given that label...So far this year, 171 cases have been designated "investigation, protection."<sup>27</sup>*

*The kinds of cases that were given noncriminal codes*

Apparently, the noncriminal code involving "investigation, protection and medical examination" was described as used for cases in which the women were unconscious, drugged, or drunk at the time of the assault. As retired Lieutenant Thomas Doyle of the Philadelphia Police Department stated,

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<sup>26</sup> The *Philadelphia Inquirer*, October 7, 1999

<sup>27</sup> The *Philadelphia Inquirer*, October 18, 1999

*“Investigation of person” was for cases that were just too hard to sort out. “You have the college student, the female, who was drinking the night before and was wet between the legs,” said Doyle, 40, now Director of the criminal justice program at Philadelphia Community College. “Is that a rape? That’s an investigation of person.”*

Apparently, the FBI disagrees. FBI officials quoted in the *Philadelphia Inquirer* stated that “there is, in fact, no requirement that a victim specifically recall the act of penetration – especially in cases where a woman might have blacked out. If a woman says she has reason to believe she was raped, but cannot recall details because she was under the influence of alcohol or drugs, the incident should be counted as a rape. If subsequent investigation proves that no rape took place, police can subtract it from their crime total.”<sup>28</sup>

As a result of the scandal in Philadelphia, hundreds of sexual assault complaints are being reviewed and many have been returned to detectives to reopen for investigation.<sup>29</sup> Unfortunately, cases such as Philadelphia spotlight problems that are evident in departments around the country.

### **How can police “create” an unfounded case?**

Another factor that falsely inflates the rate of unfounding for sexual assault cases is that police can often ‘create’ an unfounded case out of one that is actually legitimate. As described by Latts and Geiselman (1991), this process begins with the suspicion held by many police officers that a large percentage of sexual assault victims are lying.

*If the police do not believe the victim, they may directly or indirectly make this known to her, perhaps by excessive questioning that focuses on an absence of obvious injury or some delay in reporting the incident. The victim, in turn, may become upset and withdraw her cooperation. Though the woman may have been an actual survivor of rape, her lack of cooperation is itself considered sufficient grounds for marking a case as unfounded in most jurisdictions.*<sup>30</sup>

By not believing the victim and communicating this mistrust to her, the officer can cause a victim to become noncooperative when she would not otherwise have been. Worse, by “creating” noncooperative victims in this way, the officer fuels a misperception that most victims will not cooperate with police investigation and most sexual assault claims are without merit. The mistrust is then heightened and carried over into the next case. “The result is a never-ending spiral of suspicion and pain for both [the police officer and victim.]”<sup>31</sup>

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<sup>28</sup> Quoted from Maryvictoria Pyne, spokeswoman for the FBI’s Uniform Crime Reporting program, in the *Philadelphia Inquirer*, October 18, 1999

<sup>29</sup> *Philadelphia Inquirer*, October 29, 1999

<sup>30</sup> Direct quote from Latts & Geiselman, 1991, p.8

<sup>31</sup> McDowell & Hibler, 1987, p.275

### **How can officers counter the “cycle of distrust” that harms both police and victims?**

By investigating sexual assault cases thoroughly and responding to victims with compassion, officers can go a long way toward countering the “cycle of distrust.”

- By approaching cases with the assumption that they are valid, victims will respond with increased openness and trust that will facilitate investigation.
- By conducting victim interviews in accordance with guidelines provided in this manual, officers will be rewarded with increased cooperation, information, and investigative leads.
- By utilizing a teamwork approach to sexual assault response, police can join the other professionals involved (medical personnel, victim advocates, prosecutors, etc.) in improving services to victims that will facilitate their recovery and cooperation.
- By taking steps to reduce the likelihood of inconsistent or untrue information in the victim’s statement (described in the module on victim interviewing), officers will learn to better distinguish allegations that are false from those that are true but described with partial or distorted information.

In addition, officers must be aware of the psychological toll demanded by their jobs and follow guidelines for stress reduction and general wellness. Some of these guidelines are provided in the supplemental material, and they can hopefully be used to help officers cope with the very difficult challenges of investigating sexual assault cases.

### **What are appropriate procedures for unfounding and administrative closure?**

Clearly, it is inappropriate to use unfounding or other noncriminal codes as a means for dumping sexual assault cases that are considered to be murky or difficult. The solution to the problem, however, is two-pronged. On the one hand, every case of sexual assault must be investigated thoroughly, based on the assumption that the claim is valid. The reality is that despite the threat of false allegations that is present for every type of crime, police and society have historically viewed sexual assault victims with heightened suspicion.

- Based on the myth that women routinely fabricate claims of sexual assault, police and the public have traditionally treated rape victims as if their stories were suspicious until proven to be valid.
- Instead, sexual assault victims must be given the same consideration as other crime victims – each and every claim of sexual assault must be assumed to be valid unless proven otherwise.

On the other hand, departments must implement alternative mechanisms to unfounding for the purpose of administratively closing cases. As stated repeatedly throughout this module, UCR

guidelines dictate that a case should only be unfounded if it is “determined through investigation to be false or baseless.”<sup>32</sup>

According to the FBI guidelines for Uniform Crime Reporting, “If the investigation shows that no offense occurred nor was attempted, the reported offense can be unfounded for UCR purposes.”

Furthermore, these guidelines indicate that “the refusal of the victim to cooperate with prosecution, or the failure to make an arrest does not unfound a legitimate offense.”<sup>33</sup>

- UCR guidelines do recognize, however, “that departmental policy in various law enforcement agencies permits the discontinuance of investigation and the administrative closing of cases in which all investigation has been completed.”<sup>34</sup>
- In addition, the UCR category of “exceptional clearance” can be used for cases in which the offender is identified but cannot be charged or the victim refuses to cooperate.<sup>35</sup>

The good news is that departments who implement appropriate mechanisms for administrative closure (such as simple inactivation or exceptional clearance) exhibit a decrease in the rate of unfounding so it is in line with that for other index crimes.

- For example, New York City Police Department statistics for unfounding went from 15% to 2% in a year following reforms and restructuring, both in the police department and prosecutor’s office.<sup>36</sup>

### **How to handle the frustrating reality of false allegations.**

Of course, having demonstrated that the percentage of false sexual assault allegations is not as high as commonly perceived, this does not deny their terrible reality. False allegations do exist and they are very damaging to officers as well as the real victims whose credibility they undermine.

To prepare officers for this reality, we have provided in the appendix some materials on the indicators and investigation of false allegations (excerpted from McDowell & Hibler, 1987). Interestingly, most of the indicators described are exactly contrary to those often seen by the police and public as cues for suspicion. This is not a coincidence.

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<sup>32</sup> Uniform Crime Report Guidelines, p.40

<sup>33</sup> Uniform Crime Report Guidelines, p.40

<sup>34</sup> Uniform Crime Report Guidelines, p.42

<sup>35</sup> Uniform Crime Report Guidelines, p.42

<sup>36</sup> Brownmiller, 1975

- Consider this: If a woman is going to fabricate a claim of sexual assault she is likely to base this invented crime on the same stereotype of “real rape” that has been discussed at such length throughout this manual.
- For example, false allegations are more likely than valid claims to include a vaguely described stranger who used a great deal of force and to which the victim responded with her utmost physical resistance.

Other indicators and techniques for investigating false allegations are detailed in the appendix. However, as the authors caution, none of these indicators should be considered significant when observed in isolation. An allegation should only be considered suspect when many of the indicators are present, and it should only be determined to be false when the investigative facts directly contradict the victim’s account of events.



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## **Appendix: Indicators and Investigation of False Allegations**

The following material is excerpted from:

C.P. McDowell and N.S. Hibler (1987). False allegations (Chapter 11, p.275-299). In R.R. Hazelwood & A.W. Burgess (Eds.), *Practical aspects of rape investigation: A multidisciplinary approach*. Elsevier: New York.

When false allegations of sexual assault are made, there are a number of reasons that might motivate this act. One of the most prominent among these is that some women fabricate allegations of sexual assault out of a desperate need for attention. Other reasons could include a need for denying or shifting responsibility for consensual sexual activity.<sup>37</sup> Regardless of the reason, the false allegation can range from a somewhat vague description of an event to a detailed account perhaps supported by self-inflicted injuries and/or evidence.<sup>38</sup> The following sections are drawn from McDowell and Hibler's (1987) detailed examination of false allegations and the characteristics that can sometimes be used to differentiate them from valid claims. As they caution, however, none of these characteristics is significant by itself and may not even indicate a false allegation when they appear in combination. Rather, when many of the indicators appear in a particular case this should simply be used as a caution to the investigator that the allegation could potentially be distorted or false.

### *Indicators of false rape allegations*

There is, of course, no simple way to determine the legitimacy of any criminal complaint. This is true whether the report concerns the commission of a rape, a burglary, or any other offense. All complaints must, of necessity, be taken at face value and, unless there is some specific reason to believe otherwise, handled accordingly. In most instances, it is impossible to determine whether the crime actually occurred unless the victim is moved to admit that the report was false. However, as in the false burglary or robbery complaint, certain characteristics are found with greater frequency in false rape reports than in actual rape cases. In and of themselves, none of these characteristics are significant, but taken together, they indicate a potential that the facts may be different from those reported.

### *The victim-offender relationship*

The literature suggests that a preponderance of rapes are committed by individuals who are known to the victim or with whom they have had some prior relationship. Many of these rapes are sexual assaults by friends, acquaintances, co-workers, associates, and even relatives. As a matter of fact, such affiliations often create additional problems for the victim because she must continue to face her assailant (as well as mutual friends) throughout the ordeal of the

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<sup>37</sup> McDowell & Hibler, 1987. Of course, other motives are possible for deliberate fabrications, including covering up a pregnancy or other sexual consequence or for revenge.

<sup>38</sup> McDowell & Hibler, 1987

investigation and any subsequent legal proceedings. In false rape allegations there seems to be a somewhat higher probability that the assailant will be a stranger, a "slight acquaintance," a "friend of a friend" whose name the victim has forgotten. The apparent reason for such a choice is that the victim removes the possibility of being confronted by a specific individual and, in addition, does not get anyone in trouble.

However, by creating an essentially anonymous rapist, the pseudo-victim can effectively absolve herself of any responsibility for a relationship and thus affirm her basic innocence. In addition, by claiming to have been raped by an unidentifiable person, she makes it impossible for the police to "successfully" resolve the case, and the mind can freely shift responsibility from itself to the offender and ultimately to the police without fear of being contradicted.

#### *Force and resistance*

One of the more obvious features of rape is that its victims typically report being overwhelmed by fear. Because of this, the actual level of physical resistance is frequently low and thus the actual force used by the rapist may not go beyond verbal threats. Even though the rapist may not employ physical methods or a visible weapon in his attack, the victim is convinced she is in mortal danger and reacts by doing whatever appears most likely to preserve her life. Often this involves a relatively nonviolent submission to her assailant. On the other hand, those making false complaints seem to claim more frequently to have fought with all their ability. They typically report punching, kicking, and scratching their assailants until they are themselves finally overpowered. Others bolster an inability to resist by claiming they were attacked and raped by more than one person. In other cases, the pseudo-victim claims the assailant was exceptionally large or powerful and able to overcome her resistance with relative ease. The important point is that false victims more frequently include the face-saving element of either having resisted or having been confronted with a situation that made resistance impossible.

#### *Nature of the sexual acts performed*

Although common law traditionally defines rape as an act involving sexual intercourse, the crime may also involve any number of other sexual acts. In a significant proportion of rape cases, women are subjected to acts other than or in addition to sexual intercourse. Such acts appear to be reported less frequently in the case of false complaints. Apparently, the report of rape is not seen by false claimants as requiring collateral reports of oral or anal sex, unless such acts are included in the person's sexual repertoire. Thus, the false claim of rape is usually found to be more narrow in its construction and seldom includes much more than allegations of penile penetration and the manual manipulation of breasts or genitalia. This characteristics may arise from the reasoning that other acts are not required to support the claim, that the individual finds such acts personally repugnant and does not wish to debase herself, or that the mind does not require her to be ore deceitful than is absolutely necessary. Just as important, under-describing of the attack may be another manifestation of the false claimant's naiveté as to what actually occurs in these crimes.

### *Recall of details*

Women who have been raped are generally able to provide a reasonably accurate description of the event, including the nature and sequence of the sexual acts performed.<sup>39</sup> Women who make false allegations seem to more frequently report that they had their eyes closed at the time, that they “passed out” and do not recall the penetration, or that they cannot recall the specifics of the actual sex act itself. In the opposite extreme, they may also provide an emotionless, but exquisitely detailed, description of the event. It is important to note here that actual rape victims may also provide an emotionless description of what happened, a procedure that reflects their attempt to mentally disassociate themselves from the unacceptable experience. However, in the case of an actual rape, the description is seldom in the same exquisite detail.

Recounting the event may be embarrassing and emotionally unpleasant for the rape victim, but it is basically a recitation of what occurred. The woman making a false complaint is in a different situation. She must either “invent” the acts she alleges, or she must convert a consensual sexual experience into a “rape.” In so doing, she finds herself in a culturally anomalous situation. Our society does not encourage women to discuss their sexual activities with others, especially with strangers (e.g., police officers). Reporting a false rape places the woman in just that circumstance. Unable to recount objectively something that was done to her, she tends either to become vague and evasive or to cross the cultural barrier and become overly descriptive.

### *Physical injury*

Based on our experience, approximately one-third of the legitimate rapes include some form of violence against the victim. In most instances this involves hitting or slapping the victim, choking her, knocking her to the ground, and/or forcibly tearing her clothes off. In the small percentage of the above cases, the level of violence is devastating.

Rape victims who are physically assaulted (beyond the rape itself) may sustain serious injuries, including broken bones, the loss of teeth, mutilation of the genitalia and breasts, and internal injuries. Indeed, some rape victims are murdered during the assault. False complainants do not usually present serious physical injuries. However, as one moves along the continuum of personal pathology, the extent of self-inflicted harm can increase.

*Case example: A 27-year old housewife was found, in a dazed state, lying on the ground in a wooded area near her house. A threatening letter was found tucked in her panties. She claimed to have been assaulted, but not raped. She sustained a number of scratches and bruises but was not seriously injured. About a week later, she claimed to have been assaulted in her basement, resulting in serious*

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<sup>39</sup> Of course, this may not be true if the victim was under the influence of drugs or alcohol. Many legitimate victims also fail to recall details of their assault due to trauma and the resulting cognitive disorganization. This indicator must therefore be used only with extreme caution. It should only be seen as cause for suspicion if it occurs in combination with several other indicators.

*lacerations. A message written in blood informed her that she had been "warned."*

This woman had been previously discharged from the armed forces for having made a false rape allegation, which was accompanied by self-mutilations. She had a long history of hospital admissions for suspicious injuries and illnesses. She was experiencing serious marital and financial problems and was having difficulty in evening college courses. The allegation provided her with an opportunity to become a "legitimate" victim and to receive care, sympathy, and support otherwise missing in her life.

These self-inflicted injuries are typically different from those that occur in actual sexual assaults. There are two characteristics about the injuries claimed in false rape allegations that should be of interest to the investigator. The first involves the wounds themselves, and the second concerns the victim's reaction to her injuries.

False victims who have injured themselves tend to exhibit an unusually wide array of wounds. In spite of this, extremely sensitive organs or tissues such as the eyes, nipples, lips, or genitalia are almost never injured. Self-inflicted injuries are usually caused by scratching with fingernails or by cutting with a razor or other sharp instruments. As such, the wounds tend to be located within reach and at unusual angles. Often they conform to the range of motion of the person's arm or hands. This is particularly noticeable in cuts or scratches on the sides, front, and lower back of the torso. Although the wounds may range from minor scratches to life-threatening lacerations or punctures, they usually appear more severe than they really are. This is because they are inflicted for the purpose of supporting the individual's claim rather than to mutilate or kill. They also frequently reflect a sophisticated understanding of anatomy (i.e., major arteries or tendons are avoided and the likelihood of permanent disfigurement is minimal).

The second characteristic of pseudo-victims who injure themselves is their tendency to be strangely indifferent to their wounds. They appear to accept their injuries with a degree of nonchalance not found in people who sustain similar injuries at the hands of others.<sup>40</sup> Variations of this syndrome are often referred to as "la belle indifférence," and the feature is usually quite noticeable even though a general anxiety may be present.

### *Evidence*

Law enforcement authorities correctly place a premium on the evidence supporting an allegation, because it often provides information needed for the prosecution of the case. Because of the nature of a rape case, evidence is particularly important. Moreover, the consistency or inconsistency of the evidence may suggest that a rape complaint has been exaggerated or is completely false. An absence of the kinds of evidence usually associated with rapes can sometimes be as revealing in identifying false allegations as its presence is in establishing that a

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<sup>40</sup> Marcus, 1981; Ross & McKay, 1979

rape has actually taken place. Some of the types of evidence that appear to suggest a false allegation are:

- Complainant cannot recall where the crime took place even though she does not report being blindfolded, under influence of drugs or alcohol, or moved from location to location.
- Crime scene does not support story (i.e., ground cover not disturbed; no footprints where there should be; no signs of struggle when they should logically be present).
- Damage to her clothing is inconsistent with any injuries she reports (i.e., cuts or scratches inconsistent with tears or cuts in clothing).
- Complainant presents cut-and-paste letters allegedly from the rapist in which death or rape threats are made.
- Note or letter is identifiable with pseudo-victim (via handwriting analysis, indented writing, typewriter comparison, paper stock, or fingerprint comparison).<sup>41</sup>
- Confirming laboratory findings are absent.

#### *Personality and lifestyle considerations*

In false rape allegations, extensive and important information on the complainant is often available. In general, this information suggests that the pseudo-victim has experienced numerous personal problems and that her ability to cope is seriously impaired.<sup>42</sup> For example:

- In temporal sequence, the “rape” follows one or more escalating incidents revealing difficulties in her personal relationships.
- Complainant has history of mental or emotional problems (particularly referencing self-injurious behavior, with hysterical or borderline features).
- Complainant has previous record of having been assaulted or raped under similar circumstances.
- Allegation was made after a similar crime received publicity (suggesting modeling or “copycat” motive in which the similarity to the publicized crime offers credibility).

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<sup>41</sup> Paper can also now be tested for potential DNA evidence.

<sup>42</sup> Some of these same characteristics, however, may also leave an individual particularly susceptible to actual victimization. They should therefore be seen as cause for suspicion only when they occur in combination with other indicators.

- Complainant has extensive record of medical care for dramatic illnesses or injuries.
- Friends or associates report that the complainant's postassaultive behavior and activities were inconsistent with her allegation.
- Complainant becomes outraged when asked to corroborate her victimization.
- Complainant tries to steer the interview into "safe" topics or those that tend to engender sympathy.

#### *How to deal with false accusation cases*

Obviously, confronting the victim with "validity concerns" should take place only when there are serious questions concerning the truth of the report. Confronting a person suspected of making a false complaint is always a difficult matter. The critical issue is that if the doubts are incorrect, this would greatly compound the victim's trauma. Such a confrontation will also undoubtedly destroy any relationship that may have been developed between the victim and the investigator. One way to handle this challenge to the victim's credibility without sacrificing the investigator's rapport with the victim is to introduce a second party, a person who can act as a buffer. The principal investigator needs to be available to the person alleging rape and should maintain a nonjudgmental, supportive, and sympathetic relationship with her. It would be counterproductive for this person to voice any doubts as to the veracity of her report. Issues regarding unresolved inconsistencies, conflicts, or the lack of supporting data should be made by an investigative supervisor or co-worker. In this way, the vital relationship between the complainant and the principal investigator may be maintained and perhaps even improved.

The supervisor's style of confrontation should also be supportive, however, since false allegations are usually desperate attempts to protect self-esteem. Any harsh challenges to the person's credibility will increase her defensiveness. It is often effective to simply present doubts to the victim in a way that makes it clear they are based on the information she herself has provided. This decreases personal conflict while conveying an impression that investigators have been thorough and objective. It also allows for adjusting investigative hypotheses and gives the victim an opportunity to provide additional information without having to place herself in a psychologically threatening position.

The reaction of fictitious victims to this approach varies. At the low end of the adaptation continuum there is usually an emotional confession, mixed with both despair and relief. The amount of energy required to maintain her story is exhausting, and this becomes a time for her to cooperate and seek solace. Exaggerators and malingerers often provide great detail as to how and why they masqueraded as a rape victim.

At the extreme upper end of the adaptation continuum, the complainant's distortions will have been internalized and for her own well-being she will need to believe what she is saying because

she is unconsciously terrified of losing control. Consequently, her denial will be intensified no matter how the confrontation is handled. Predictably, she will react with outrage. If the family is advised of the findings they may be of great assistance to her eventual recovery. Unfortunately, because of the disordered life of such individuals, they are often estranged from their families.