



Seeking Justice Through Sexual Violence Prosecutions

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Introduction

The prosecution of sexual violence is unlike the prosecution of other crimes. Sexual violence poses distinctive challenges for prosecutors and other professionals in the criminal justice system and often involves uniquely vulnerable victims. The crimes themselves – how they are committed, who commits them, who is victimized – are widely misunderstood by those who have not been educated about perpetrator-victim dynamics. And the behavior of victims in response to the trauma of these devastating crimes is often misconstrued. While many criminal justice professionals have educated themselves about these dynamics and behaviors, the general public (including jurors) continue to be influenced by myths and misconceptions. Too often, law enforcement and prosecutors “weed out” the more difficult cases based on a perception that the cases will prove to be “unwinnable” – that the legal and factual challenges are insur-

mountable. In some cases, victims are deemed “uncooperative” or “unreliable” when, in reality, their behaviors are symptoms of significant trauma. Disappointingly few cases make it to trial, and even fewer result in conviction. Moreover, the problem is self-perpetuating: to the extent that police and prosecutors are not vigorously pursuing more challenging cases, they are not developing and honing the skills necessary to build sexual assault cases that will result in convictions.

However, conviction rates tell only part of the story about whether a prosecutor’s office is successful in handling cases involving sexual violence. If difficult or challenging cases fall by the wayside early in the process, they are generally not factored into the rate of conviction. While there may be a thin veneer of success in terms of conviction rate, the reality is that serial perpetrators, or those who are clever in their choice of victim, escape justice while victims who have been

violated in the most personal and devastating way are left to their own remedies, without the support of the criminal justice system. Studies examining the testing of previously backlogged sexual assault kits in just three cities — Cleveland, Memphis, and Detroit — have revealed over 1,250 suspected serial rapists linked to assaults occurring all over the United States.²

If conviction rates are not a reliable measure of success, what is? The answer lies in the quality of the prosecution response. In prosecuting sexual violence, more so than with other crimes, the process is as important as the legal outcome in achieving a just result. The entire process of thorough investigation and meticulous prosecution yields many benefits, regardless of whether any individual case results in conviction:

- Prosecutors and investigators hone skills and refine strategies that increase the likelihood of conviction in future cases.
- Better prepared cases shine a light on the full range of an accused's conduct, exposing predatory behavior, exploitation, manipulation, and intimidation.
- Serial offenders are identified so that future victimizations can be prevented.
- Law enforcement and prosecutors come to recognize the prevalence of cross-over offenders — individuals who victimize both persons they know (intimate partners, acquaintances) and those they don't know.
- Evidence is developed that may be admissible in other cases involving the same perpetrator.
- Trauma-informed responses reduce re-traumatization in victims.
- Victims see their cases are taken seriously and obtain a measure of validation and closure.
- Victim safety, privacy, and confidentiality is respected and protected.
- Victims are encouraged to report crimes.
- Community relations are strengthened by consistent messaging from prosecutors in a position of leadership.
- Communities are made safer.
- Jurors and judges are educated in dynamics of sexual assault and how trauma may affect victim behavior.
- Improved coordination and cooperation between criminal justice professionals allows all involved to share information, knowledge, and expertise — streamlining the process for victims and allowing agencies to make the best use of available resources.

This article explains the problems that have arisen as a result of overreliance on conviction rates in cases of sexual violence. It identifies the core principles that should inform a model response to these crimes to further the goals of justice — i.e., offender accountability, victim well-being, and community safety. Finally, it discusses how prosecutors can broaden definitions of “success” in the prosecution of sexual violence, and how they can measure their current response as well as efforts toward improvement.

A NOTE ON TERMINOLOGY:

Across the United States, sex crimes are named and defined differently. The criminal acts range from sexual penetration to sexual contact or exposure, with additional elements ranging from physical force to lack of consent. This article will use the terms rape, sexual assault, and sexual violence interchangeably when referring to any of these crimes.

The Accountability Gap: Incidence of Sexual Violence vs. Prosecution and Conviction Rates

“Sexual violence is a deeply traumatic crime that can cause severe damage to survivors’ emotional, spiritual, and psychological well-being.”³ Studies estimate that 1 in 5 women and 1 in 71 men have been raped at some point in their lives.⁴ Sexual assault is both physically and psychologically harmful. In addition to the physical harm, which studies show 1 in 3 female victims and 1 in 6 male victims experience, victims suffer from an invasion of personal autonomy and dignity.⁵ In fact, the largest proportion of crime victims suffering from post-traumatic stress disorder are sexual assault survivors.⁶

Yet despite the prevalence of sexual violence — and the harms that it causes — disappointingly few offenders are ever held accountable through the criminal justice system. More than two-thirds of sexual assault victims do not report the assaults committed against them to police for reasons that include fear, embarrassment, trauma, loyalty towards or fear of the perpetrator, distrust in the criminal justice system, and a belief that the criminal justice system is an inappropriate vehicle for resolving their experiences of violence.⁷

Even when victims do report sexual assault, it is not always a given that their cases will be investigated and prosecuted. Regardless of the intentions of system professionals, and despite their beliefs in the strength of their offices' responses to these crimes, research reveals that arrest rates, prosecution rates, and conviction rates for sexual violence are staggeringly low.⁸ In one six-site study, for instance, researchers found that between 80 and 89 percent of cases reported to the police were either never referred to the prosecutor's office or were declined for prosecution.⁹ The backlog of sexual assault kits has been the most tangible sign of the gap between reported sexual assaults and arrest, prosecution, and conviction. Historically, thousands of victims of sexual assault have not only reported cases to law enforcement but presented for medical care and forensic evidence collection;¹⁰ many of these cases remained dormant until the Sexual Assault Kit Initiative (SAKI) provided funding for testing backlogged sexual assault kits and training for system professionals. And while SAKI has made an enormous dent in the testing of kits, the challenge persists. While there is limited data on the remaining backlog across the United States, recent reports from individual jurisdictions reveal worrying numbers of still-untested kits.¹¹ This enduring problem is reflective of the larger crisis of staggering case attrition in the criminal justice system — what researchers have dubbed “[o]ne of the most enduring realities of sexual assault.”¹²

What causes the gap between reports of sexual assault and actual prosecutions? Is law enforcement failing to investigate or refer cases for prosecution? Are officers “exceptionally clearing” these cases¹³ based on perceptions about downstream decision-making?¹⁴ Are cases

being referred for prosecution but then declined based on inadequate or inaccurately analyzed investigations? Are triable cases being declined for some other reason?

Answers to these questions can be gleaned from attrition studies,¹⁵ reports from untested sexual assault kits,¹⁶ investigative reports,¹⁷ victim feedback,¹⁸ and anecdotal evidence, including multidisciplinary participant feedback at trainings. Among the likely explanations are credibility assessments grounded in sexual violence myths (e.g., regarding assaults committed against acquaintances and intimate partners, persons in the commercial sex industry, or intoxicated victims);¹⁹ unconscious biases related to age, race, and socioeconomic status of the victim or offender;²⁰ lack of information and training about sexual violence perpetration, victimization, and trauma; agency resource shortages; and concerns over conviction rates.²¹ When it comes to investigation and prosecution of cold case sexual assaults, additional factors are likely at play. These may include the perceived effect of the impact of time on victims, witnesses, and evidence, as well as concerns related to pre-accusatorial delay, reflecting a dire need for specialized cold case training.

Collectively, these factors paint an unacceptable picture of the criminal justice response to sexual assault — a picture that is distressing for the countless prosecutors seeking justice and devastating for the countless victims who deserve it. The crisis also has significant implications for victim and community safety. Testing of backlogged sexual assault kits has revealed that serial sex offending is more common than previously estimated: roughly a third to a quarter of offenders identified through SAKI are serial offenders—i.e., connected to at least two sexual assault kits associated with a criminal report.²² Research examining the testing of kits has also shown that serial offenders do not always have the same modus operandi, or specialized marks of their offense; such offenders may assault strangers, as well as persons known to them.²³

Improving the response to sexual violence will not only increase the number of cases investigated and prosecuted, but will encourage more survivors to report their assaults and reduce the occurrence of these crimes as communities identify more perpetrators.

The Core Principles Guiding Best Practices in Sexual Assault Prosecution

Prosecutors' dedication to seeking justice can make it difficult to see and accept failures. When we hear survivors say that they feel ignored or abandoned by the system, our defenses kick in. We stubbornly insist that survivor perceptions are not accurate — not in our jurisdictions. However, a better response is to truly listen to survivors' feedback, acknowledge that our approach may not be fully achieving our goals, and examine how our practices can be improved. This involves reviewing our disposed cases to determine trends in outcomes; assessing our policies and practices against best practices; reviewing the most current scientific, social scientific, and forensic research; and enhancing our awareness of advanced DNA technologies, among numerous other strategies. Below, we describe the core principles of a model response to sexual violence, as well as strategies for bringing these principles to life through office-level and case-level practices. By employing the strategies described below, prosecutors will be better equipped to seek justice for victims, hold offenders accountable, collaborate with other criminal justice stakeholders to end the current backlog of sexual assault kit, and ultimately prevent future backlogs.

Trauma-Informed

A trauma-informed approach requires prosecutors to understand how trauma affects victims of sexual violence, and to interact with victims in a manner that minimizes re-traumatization and maximizes their engagement with the criminal justice system. Victims are unique individuals — as are all people — and their responses to trauma can be just as diverse. When recounting the details of sexual violence, victims may cry, laugh, talk loudly and aggressively, exhibit a flat affect, or shut down entirely. Victims may “cope” by attempting to ignore or normalize what happened to them,²⁴ prompting them to be angry or confrontational when pressed for information. Trauma may also impact a victim's ability to recount the details or the chronology of the assault and surrounding events. They may have triggers, such as sounds or smells, which cause them to relive some aspect of their assault. Victims experi-

encing these effects may also attempt to self-medicate using drugs or alcohol. The effects of trauma can be exacerbated for victims of intimate partner sexual assault, who repeatedly endure both physical and sexual violence at the hands of a trusted partner, as well as for BIPOC²⁵ victims, who may have experienced generational trauma caused by racial violence, systemic discrimination, and/or familial patterns of abuse.²⁶

Prosecutors should also be mindful of the trauma of reopening cold cases, where DNA evidence is matched years or even decades after a victim is assaulted. In such cases, victims face unique challenges when engaging with the criminal justice system, particularly when it comes to testifying at trial. Whether a victim has been able to place their trauma behind or has carried it with them, facing their offender at trial may reopen old wounds and lead to re-traumatization.

Prosecutors can employ numerous strategies to mitigate the effects of trauma on the victim and on the criminal case. These may include but are not limited to: collaborating with allied professionals, including system-based and community-based advocates, to ensure victims receive any needed services, including counseling, medical care, civil legal assistance, and safety planning; tailoring victim interviews to elicit sensory and experiential details; and requesting accommodations for victim testimony, such as the presence of victim advocates or support animals near the witness stand. Cold cases require consideration of additional strategies to mitigate victim trauma. For example, prosecutors may consider working closely with advocates, law enforcement, and other allied professionals to determine a protocol for notifying victims of CODIS²⁷ hits or reopened cases. These and other strategies are discussed in detail in AEquitas and SAKI resources.²⁸

Victim-Centered

A victim-centered approach to sexual assault appreciates the central role victims play in the judicial process and consider their needs throughout. The best possible case outcomes not only hold the offender responsible for their actions, but account for the victim's history, experience, and perspective, as well as the impact of

the criminal justice process on their lives and their family, school or workplace, and community.

Prosecutors should understand that, although they have a duty to seek accountability for offenders, pursuit of this duty cannot come at the expense of the victim's well-being. This means that practices recognized as harmful to victim safety, such as the use of material witness warrants,²⁹ should be reserved for the most serious of cases and under extreme circumstances, if at all. It also means that victims should have access to civil attorneys and community-based professionals who can maintain victim confidentiality and zealously advocate for the victim's interests, which may sometimes run counter to the prosecutor's.³⁰

A victim-centered approach also requires that victims are kept informed at all stages of the criminal justice process. During pre-trial, for example, prosecutors can let victims know when they intend to file motions to admit or keep out certain evidence, or when court dates get delayed. Prosecutors should also meet and thoroughly prepare victims for trial by practicing direct and cross-examination, as well as discussing anticipated defense strategies and how the prosecutor plans to address them.

Offender-Focused

By recognizing that offenders purposefully, knowingly, and intentionally target victims whom they believe they can assault with impunity, prosecutors can persistently focus on the offender's actions and intent and oppose defense tactics to deflect the focus on to the victim. An offender-focused approach is driven by an accurate and unbiased analysis of a case and applicable law, as well as a thorough understanding of offender conduct and offender-victim dynamics. The rights of crime victims are always protected to the best of the prosecutor's ability.

Prosecutors can narrow the focus on serial offenders, in particular, by litigating motions to introduce evidence of the offender's prior acts under Rule 404(b) of the Federal Rules of Evidence or its local equivalent. Defendants in sexual violence cases commonly assert that the victim had consented to sexual activity. Evidence of prior acts can help overcome the consent defense by establish-

ing the perpetrator's intent, preparation, or common scheme or plan for the assault. In some cases, the defendant's identity will be at issue — but if the defendant used distinctive methods of carrying out the assault, evidence of previous assaults can be used to identify, or support the identification of, the defendant. Prior acts evidence can also be utilized to rebut a claim of mistake of fact — for instance, in a case where the defendant claims that he did not know a victim was too intoxicated to consent. In these cases, the prosecutor may have evidence of prior victims who had reported sexual assault by the defendant under the same or similar circumstances. Such evidence may show a common scheme or plan to isolate and assault intoxicated victims. When the prosecutor's office has multiple cases involving similar assaults on multiple victims, they can seek to join these cases where the evidence meets this standard; if joinder is not allowed, the prosecutor may still bring in evidence regarding other victims by way of 404(b).

It should be noted that admission of 404(b) evidence is one of the most litigated areas on appeal.³¹ A sound 404(b) strategy requires a specialized prosecutor who can lay a clear record as to the admissibility of the evidence under as many theories as applicable and prepare a sample cautionary instruction for the jury's consideration of such evidence. Prosecutors should ensure that the judge in their cases articulates the legal reasoning and analysis supporting a decision to permit admission of 404(b) evidence. They can request that the court address each of the proffered theories individually and in the alternative. This should be done on the record and, if possible, by written decision.

Multidisciplinary

Research has shown that a system working collaboratively to provide a coordinated response will encourage more victims to access services and participate in the criminal justice process, more effectively hold offenders accountable, and help improve victim and community safety. Collaboration enables prosecutors and allied professionals to share resources, educate one another, evaluate and refine their practices on a continual basis, adapt in response to emerging issues, and ensure the sustainability of their practices.

Sexual Assault Response Teams (SARTs) are multidisciplinary teams that coordinate the community's response to sexual assault. They are an invaluable resource for prosecuting sexual violence crimes. SARTs "[e]nsure justice and create a more compassionate and streamlined response, [allowing] service providers [to] intervene in a way that speaks to the context of each victim's circumstance and respects the unique roles of the different professionals involved in responding to sexual assault."³² SART team members typically include several "core" members, including prosecutors, advocates, law enforcement, forensic examiners, and medical personnel, but may also include professionals from other disciplines, such as crime lab analysts, dispatchers, civil and victim's rights attorneys, faith-based providers, federal grant administrators, policymakers, culturally-specific organizations, corrections, probation, parole, and sex offender management professionals, to name a few.

SARTs or multidisciplinary teams often pursue two primary goals. The first is to promote regular contact and coordination among disciplines as they respond to individual cases. This allows allied professionals to ensure a holistic response to victim needs while enhancing relevant aspects of the criminal justice response.³³ SART members can also provide expertise on physical, behavioral, and forensic evidence. In the context of a cold case, for instance, a crime lab analyst may be able to provide invaluable insight into advanced DNA technologies that could help establish investigative leads for identifying unknown offenders. SARTs can also review cases after the fact to assess how they were handled and to determine steps for improvement moving forward.

The second goal of a SART is to improve the broader community response by identifying gaps in victim services, mapping existing networks of support and expertise, raising concerns and offering solutions to better integrate and improve existing practices, developing new sustainable practices (adapting best practices from other jurisdictions where appropriate), and developing a plan for receiving and responding to feedback. For instance, as mentioned earlier, individual SART members can offer their unique perspectives

to help develop a victim notification protocol when a cold case is re-opened or results in a CODIS hit.³⁴

Specialized Prosecution

Prosecutors must understand offender-victim dynamics in various types of sexual assault cases, as well as assumptions and misconceptions widely held by both laypeople and professionals. Specialized investigative practices provide enhanced knowledge and require greater skill to uncover relevant and probative evidence, while keeping victims engaged throughout the process. Specialized trial expertise provides enhanced knowledge and requires greater skill to explain common gaps in evidence and counter deeply entrenched myths and assumptions about victim credibility — including how victims respond to trauma and what victimization looks like. Specialized prosecution units promote the development of such expertise, provide access to focused training, and present opportunities for collaboration with law enforcement and community partners.

Because victims of sexual and intimate partner violence are uniquely vulnerable to intimidation by the offender and the offender's friends, family, and allies, prosecutors who specialize in these crimes are well-versed in the dynamics of intimidation and thus well-positioned to respond when intimidation occurs. They are able to identify subtle indicators of intimidation, collaborate with victims and advocates to establish an appropriate safety plan, and introduce evidence of the defendant's intimidation at trial to ensure accountability. Intimidation evidence can be used to bring additional charges or establish consciousness of guilt. Specialized sexual violence and intimate partner violence prosecutors also have the experience and training to introduce testimony of a victim who has been intimidated out of coming to court under Rule 804(b)(6) of the Federal Rules of Evidence and its local equivalents.³⁵

Specialized prosecutors are also better able to build rapport and trust with victims, which may enable them to develop new evidentiary leads. Their experience in sexual violence cases also enables them to appreciate the relevance of certain evidence, which may be overlooked by a less experienced or non-specialized

prosecutor. For instance, prosecutors can ask victims questions about the circumstances under which they disclosed and to whom, leading to corroboration of the victim's testimony; elicit sensory, emotional, and physiological details of the assault, which provides powerful evidence for juries; and work with the victim to uncover any information pertaining to anticipated defenses.

Prosecutors who have identified possible defense strategies are better prepared to counter these defenses in their case-in-chief and to file motions precluding the defense from introducing irrelevant or prejudicial evidence. The defense strategy may be to discredit the victim's memory or perception of events (typically where alcohol is involved) or directly challenge their credibility, portraying the victim as having "buyer's remorse" — someone who later regrets a voluntary act. The defense may try to prove a motive to fabricate, attempt to pierce the rape shield by questioning the victim about prior sexual activity, or present other evidence to impugn the victim's character for the purpose of making the jury dislike the victim. Another defense strategy is to minimize evidence of force by focusing on the victim's prior consensual acts with the perpetrator, characterizing any injury as trivial or an accidental byproduct of "rough sex." To the extent that defense strategies rely on improper evidence, they can be opposed with motions *in limine*. Victim-blaming strategies not involving improper evidence can be effectively countered at trial through carefully planned testimony and argument. For example, where defendants allege that the victim had a motive to fabricate, prosecutors can ask victims to describe how they felt during medical-forensic examinations or interviews with the responding officer, and then ask the jury why the victim would endure that humiliating process if the assault did not occur. While it is never proper for the prosecutor to express a personal belief in the victim's truthfulness, it is important to always project confidence in the victim's veracity and reality of the harm suffered.

Research-Informed

Prosecutorial decisions must be driven by the most current and accurate scientific, sociological, and legal research. Innovative practices to improve responses to

sexual violence must be research-informed and implemented to determine their true value. Where effective, these practices should be sustained, reevaluated, and refined for improvement and ongoing relevance to changing conditions.

For example, research, as well as the experiences of Sexual Assault Medical Forensic Examiners (SAMFES), has shown that a lack of physical injury is not inconsistent with a crime of sexual violence.³⁶ Even a minor child disclosing past sexual abuse with no genitourinary injuries will not always present with injury.³⁷ Armed with this knowledge, prosecutors can utilize experts to explain to juries the significance of injuries — or lack thereof — in sexual assault cases.

Research, as well as the expertise of allied professionals, can also aid prosecutors' understanding of victim behaviors. As discussed earlier, many aspects of victim behavior that make a sexual assault case challenging for jurors (and possibly for prosecutors and police) — delayed reporting, piecemeal disclosure, gaps in recall, inconsistencies in the victim's account — may be attributable to trauma. Studies by neuroscientists indicate that memories of traumatic events may be fragmented, inaccessible, or less readily retrieved than other memories. Chemical changes in the brain during traumatic events affect the ability of victims to recall and recount details of the event. It is important for first responders, investigators/detectives, and prosecutors to have at least a rudimentary understanding of this phenomenon, so they do not draw erroneous conclusions about victim credibility and so they can interview the victim using trauma-informed techniques that will elicit as much detail as possible.³⁸ While knowledge of the available research is useful, prosecutors should avoid employing experts to testify about the neurobiology of trauma at trial. Persons with true expertise on the topic are extremely limited in number and likely costly to retain; much information on the neurobiology of trauma remains unknown; introduction of such evidence may prompt defense requests to view victims' counseling records; and there's a likelihood that such testimony could lead to impermissible diagnoses or conclusions that evade the province of the jury. Prosecutors who have a basic understanding of the available research can in-

stead utilize other experts — law enforcement, advocates, clinical psychologists, and others who commonly work with persons who have experienced traumatic events — who can educate juries about victim responses to trauma without discussing the science.³⁹

Criminal justice professionals can also benefit tremendously from knowledge of advanced DNA technologies, which can identify donor profiles from mixed samples and generate leads that result in the apprehension and prosecution of unknown suspects. The expanded use of publicly searchable databases, familial searching through CODIS in permitting jurisdictions, phenotype testing to generate genetic-based descriptions of unknown suspects, and forensic genetic genealogy have opened the door to cutting-edge investigations in both cold and current cases of sexual assault. Prosecutors who recognize the potential of these techniques can work collaboratively with investigators to identify suspects and hold offenders accountable.⁴⁰ Effectively presenting DNA expert testimony at trial requires intensive planning and collaboration with analysts. Prosecutors should work with experts to understand the science of DNA, as well as its potential and limitations. Close collaboration enables prosecutors to develop strategies for explaining complex concepts to a jury, as well as to anticipate and prepare for challenges and issues that arise during litigation.

Finally, research into serial offending and cross-offending can provide criminal justice professionals with critical context in evaluating, investigating, and prosecuting cases. Research into backlogged sexual assault kits tested through SAKI has shown that, of individuals linked with more than one kit, only 56.6% exclusively assaulted strangers, while only 15.1% assaulted only known victims.⁴¹ This means that almost 1/3 of the serial offenders assaulted both a stranger and a non-stranger, challenging what we commonly believe about serial sexual assault. Prosecutors should treat every sexual assault as one involving a possible serial perpetrator. They should advocate for expeditious testing of DNA, even in cases where the defendant admits to intercourse but claims consent, and work with law enforcement to pursue additional avenues for identifying other victims.

Performance-Driven

Improving the overall response to sexual violence requires the assessment of key elements of our practice through performance management. How do we determine if a best practice is truly effective? How can we measure our own progress in improving our practice? Historically, conviction rates have been used as the primary measure of “success” for prosecutors because they represented the only readily accessible data.⁴² Conviction rates alone, however, are not reliable indicators of a jurisdiction’s response to sexual assault. When difficult or complex cases are “weeded out” before trial, charging, or arrest, the result is a deceptively high conviction rate.⁴³ A wide variety of meaningful outcomes can occur that are not directly related to the binary result of conviction or acquittal, but which nevertheless help ensure accountability for perpetrators and safety for victims and communities. Such outcomes include victim satisfaction with the criminal justice process itself (as opposed to the disposition), as well as with the prosecutor’s use of every legitimate means to bring about a just outcome. Conviction rates fail to take these measures into account, and thus a more comprehensive performance management system is needed.

A critical aspect of any performance management process involves measuring the rates and reasons for case attrition — i.e., cases in which victims did not report their assault to law enforcement, cases closed by law enforcement without being referred to prosecutors, and cases in which prosecutors declined to bring charges. This pre-emptive “weeding out” process is rarely the result of conscious or callous disregard for victim and community safety, but rather of office policies and practices that direct the declination or dismissal of sexual violence cases characterized by so-called “difficult” issues. These may include, but are not limited to, alcohol use by the victim and/or perpetrator, a current or former relationship between the victim and the offender, lack of physical force, lack of physical injury, “non-intuitive” victim behaviors, issues related to the passage of time, and complicated DNA evidence.

By documenting the rates of case attrition at various stages in the criminal justice process, as well as the

reasons why cases are unreported, closed, and declined, prosecutors will have better insight into the scale of sexual violence in their communities and may uncover common issues that reveal areas for improvement. For instance, learning why victims do not report sexual violence can provide insight into how the criminal justice system can enhance victims' ability to report. Uncovering patterns associated with reported cases that were closed or rejected can reveal unconscious biases, resource issues, and a need for particularized training and technical assistance.

Outcomes for all cases — both those that proceed through the system and those that do not — can be disaggregated by relevant victim characteristics or demographics (e.g., race, gender identity or sexual orientation, income group, disability status). This information can provide staff valuable insights for identifying training needs as well as a factual understanding of the community they are serving. This data may provide insight relevant to interactions with victims, particular victim vulnerabilities, and case outcomes specific to particular subgroups. Information pertaining to different groups can also help indicate the extent to which equal access to justice issues are present.

Efforts to measure performance in sexual violence prosecutions should also consider case complexity. Understanding the impact of complexity on case processing and outcomes in one's own jurisdiction is an important part of assessing prosecutors' ability to properly evaluate their cases and to achieve the best possible outcomes. It effectively exposes areas where additional prosecution training or technical assistance is needed, as well as areas where community, law enforcement, or judicial education is necessary. Accounting for case complexity will also provide necessary context for case outcomes. For example, jurisdictions with high conviction rates may be rejecting cases perceived to be too difficult or complex, whereas jurisdictions with lower conviction rates may be taking such cases to trial — perhaps losing some of them, but affording victims a forum for justice and prosecutors an opportunity to refine and improve their trial skills. Prosecutors and their offices should never be penal-

ized for advancing complex cases that might lower their conviction rate; nor should they be encouraged to decline complex cases to ensure high conviction rates. Encouraging prosecutors to take on the difficult cases requires offices to develop a system that consistently captures the complexity of their cases, examines how those cases are being handled, and permits identification of those areas where improvements can be made.

In addition to contextualizing case outcomes by measuring case attrition and complexity, prosecutors have the opportunity to incorporate metrics of success that are not focused on case dispositions. Even if a case resolution that falls short of the charges or sentence pursued by the prosecutor, the implementation of best practices throughout the life of the case can generate a high quality of procedural justice for the victim and the public. A comprehensive definition of case success should thus account for the prosecution's efforts to bring about justice. A "best practices" checklist can help measure the level of procedural justice in our cases. It can also be used as the basis for regular meetings between unit chiefs and line-level prosecutors to examine the actions taken throughout the case and identify areas for improvement. Did we file a 404(b) motion? If not, should we have? Do we have the necessary training and skills, and access to experts, to work on cases involving complex DNA technologies? If not, how will we build our capacity and identify experts?

Finally, any definition of success in sexual violence cases should account for victims' experiences of the criminal justice system. Whatever the final disposition of an individual case, a victim's experience is impacted by the level of respect, dedication, expertise, and temperament of the professionals handling their cases. Although prosecutors' offices rarely survey victims, it can be helpful to systematically obtain feedback over time from victims regarding their experiences with various components of the criminal justice process. Victim survey findings can provide all partners (victim advocacy, law enforcement, medical providers, and prosecutors' offices) with (a) a comprehensive picture of progress; (b) an understanding of which problem areas need to be addressed (e.g., through training and technical

assistance); (c) feedback on the extent to which identified problems are improving or getting worse; and (d) knowledge regarding which aspects of the criminal justice response enhance victim safety and/or victim perceptions of justice.

Conclusion

Sexual violence is far more prevalent than an examination of convictions would indicate. And recent efforts to test backlogged sexual assault kits have revealed that serial sex offenders are more numerous than we thought. While prosecutors work consistently and tirelessly to achieve justice in these cases, the data revealed through SAKI, high rates of case attrition, and the experiences of survivors have shown us that current efforts are simply not enough.

There are many ways in which prosecutors can improve their practices — not only to hold more offenders accountable and make communities safer, but to enable more victims to report their assaults and to ensure that they feel heard and respected by the system. This involves working with, rather than against, victims' trauma; centering victims' needs throughout the criminal process; anticipating defense strategies and zealously countering attempts to introduce irrelevant evidence; applying relevant research; working with other system stakeholders and community partners; and consistently evaluating and refining practices. Prosecutors in the field do not have to do this alone; national training and technical assistance providers, like AEquitas, are available to help implement the strategies discussed throughout this article.⁴⁴

Ultimately, there is never a guarantee of a successful case disposition, no matter how aggressively a prosecutor seeks justice on a victim's behalf. Yet when prosecutors use every legitimate means to bring about justice, positive outcomes will be achieved. Prosecutors hone their skills and refine strategies to increase the likelihood of convictions in future cases, serial offenders are identified and exposed, myths and biases are eradicated, and victims obtain a measure of validation and closure.

ENDNOTES

- 1 This article was adapted from the Model Response to Sexual Violence for Prosecutors (RSVP Model), a three-volume resource developed by AEquitas and its partners at the Urban Institute (Urban) and the Justice Management Institute (JMI). The RSVP Model is available at theRSVP.org. The article will feature as a chapter in an upcoming publication, *SEXUAL ASSAULT AND REFORMING THE RESPONSE TO RAPE* (Rachel E. Lovell & Jennifer Langhinrichsen-Rohling eds., Routledge, 2022).
- 2 Studies of the results of backlogged sexual assault kit testing in Cleveland, Memphis, and Detroit have revealed over 1,250 suspected serial rapists, in those three cities alone, who have been linked to assaults occurring in at least 40 states and the District of Columbia. *Test Rape Kits. Stop Serial Rapists., END THE BACKLOG*, <https://www.endthebacklog.org/what-is-the-backlog/why-test-all-kits/test-rape-kits-stop-serial-rapists/> (last visited June 8, 2017).
- 3 OFF. OF VIOLENCE AGAINST WOMEN, DEP'T OF JUST., *THE IMPORTANCE OF UNDERSTANDING TRAUMA INFORMED CARE AND SELF-CARE FOR VICTIM SERVICE PROVIDERS* (2014), <https://www.justice.gov/ovw/blog/importance-understanding-trauma-informed-care-and-self-care-victim-service-providers>.
- 4 *See* MICHELE C. BLACK ET AL., CTR. FOR DISEASE CONTROL, *NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT* (2011), https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf.
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