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Title: "False Reports in Cases of Sexual Assault: Literature Review and Investigative Suggestions"

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Abstract: This article provides a detailed literature review of published studies and works that relate to false reports in cases of sexual assault. It also provides a detailed review and critique of several models that are intended to be of use to the sex crime investigator when presented with such cases. The authors conclude with the presentation of a general investigative strategy designed to help illuminate false report cases, the presentation of the Baeza False Report Index (BAFRI), and an overview of the specific motives associated with false reports.

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In his seminal work on criminal investigation, in a section dedicated to a discussion of the dangers of preconceived investigative theories, Dr. Hans Gross provides one of the earliest and arguably most informed segments on the subject of those who make false allegations of sexual assault (Gross, 1924). His discussion, which lasts less than a page, includes topics such as the various motivations for filing false reports, the occurrence of self-injury, and the related responsibilities of the investigating officer. In a more recent text on the history of rape, a discussion of the conceptualization and consequences of such false reports provides little more insight into these and associated problems (Palmer & Thornhill, 2000).

Furthermore, the authors of this work have collectively been involved in the investigation, reconstruction or assessment of hundreds of cases of child abuse and sexual assault. In that time, an estimated minimum of 20%

- 30% of those cases were determined to be false reports. At the same time, the authors have observed many other false reports that were not identified as such by the assigned investigator. In many cases, these complaints were accepted as legitimate unsolved cases, and it was not uncommon that they resulted in a suspect being falsely accused.

When viewed as contrasting reference points, the above described circumstances arguably represent a general lack of significant progress in thought on the subject of false reports by the professional communities Concerned.

To examine this issue more closely, the authors began researching premises liability cases involving alleged sexual assaults. This was done to gauge the necessity of conducting a more formal and detailed research project relating to premises liability cases and false reports. Not too surprisingly, this preliminary survey revealed quite a number of instances where key elements of the victim's statement did not match the known facts of the case, where an offender had not been apprehended or identified, and where motives for filing a false report of sexual assault appeared evident. This paper will not present research findings related to these cases, as they will be published at a later time. The purpose of this paper is to educate the professional community concerned not only with premises liability cases, but sex crime in general, as to the absolute necessity of investigating the possibility of a false report, and how that can and should be done on a case-by-case basis.

The Literature

Every so often false reports will be mentioned in the press, and unofficial false report rates will be disclosed to the public¹. However, the professional literature on the subject of false reports is sorely lacking. There have, for example, been very few scientific studies conducted to ascertain false report rates or percentages. Further still, there is a dearth in the published literature on even the subject of false reports. Put another way, those studying rape and sexual assault do not typically examine false reports, let alone talk about them. The authors of this paper are of the opinion that this is due in no small part to the fact that many researchers fear being maligned, black-listed, or threatened with sanctions should their results not agree with the prevailing sexual-political climate.

MacDonald

MacDonald (1973) shows that, in 1968, the national average for forcible rapes was 18%. He further shows that, in a one-year period in Denver, Colorado, 25% of all forcible rapes were unfounded. It goes on to explain that this is a conservative figure, as the police in Denver did not record as false reports any cases where there was a doubt as to the veracity of the complaint. Referring to the same study, MacDonald (1973) states that 20% of the forcible rape complaints were actually in doubt. MacDonald (1973) does not footnote or otherwise reference this information.

McDowell

Charles P. McDowell, a Supervisory Special Agent serving with the United States Air Force, studied false reports extensively. Although his study is unpublished, McDowell examined 1,218 cases that were initially reported as

rapes. He found that 460 rape allegations were proven, 212 rape allegations were disproven, and 546 rape allegations were unresolved. The total percentage of false reports for all reported rapes was 17.41%, or 212 out of 1,218. The total false report rate for all resolved rape allegations was 31.55%, or 212 out of 672 (McDowell, 1985).

Kanin

Professor Eugene Kanin of Purdue University in Indiana conducted one of the few published studies on false reports. Professor Kanin studied all rapes (n=109) occurring in an unnamed Midwestern city with a population of 70,000 from 1978-1987. Kanin found a 41% false report rate (Kanin, 1994). It should be noted that in Kanin's study a false report could only be identified by virtue of a confession from the alleged victim. In the same paper, Kanin also discussed the results of an unpublished study he conducted in 1988. This study examined all forcible rape complaints during a three-year period on two Midwestern college campuses. The false report rate in that study was 50% (Kanin, 1994).

Dietz & Hazelwood

The authors could find no published studies on the subject of false reports or allegations conducted by either of these authors. However, during testimony at the Tawana Brawley grand jury, Dr. Park Elliot Dietz, a forensic psychiatrist, proposed twenty false report red flags that he had developed along with retired Supervisory Special Agent Roy Hazelwood of the Federal Bureau of Investigation (FBI) (Court TV, 1997). During this testimony, Dr. Dietz specifically mentioned the existence of false report red flags and stated that, based on his own research and his consultation with Hazelwood, there are 20 characteristics that have appeared in false allegation cases. These are provided below:

- The story tends to be bizarre or sensational;
- The pseudo-victim injures herself, sometimes seriously, or simulates injury for the purpose of gaining support;
- The pseudo-victim presents herself in such a way that people believe no one would do this to herself;
- The pseudo-victim does not initially report the incident to police;
- A stranger is accused;
- The pseudo-victim claims that overwhelming force was used or that she resisted greatly or that there were multiple assailants;
- The account is either overly detailed or very vague; The pseudo-victim reports having her eyes closed during the attack or that she was unconscious, or passed out, or has no memory of what happened or was drugged, and so cannot provide details;
- The pseudo-victim is indifferent to her injuries; The expected laboratory findings are absent;
- The pseudo-victim is vague about the location of the assault or there is no evidence at the scene to corroborate the complaint;
- Damage to the clothing is inconsistent with the injuries;
- There are escalating personal problems in the life of the pseudo-victim;

- The pseudo-victim has been exposed in the past to accounts of similar things;
- The pseudo-victim's post-assault behavior is inconsistent with the allegations;

The pseudo-victim is uncooperative with the investigation;
When the pseudo-victim talks to the authorities, she tends to steer the conversation away from the specific to the unprovable;
There is writing on the body of the pseudo-victim;
There is a history of making other false allegations;
There is a history of extensive medical care.

Clearly, some of the above red flags have value. However, some of the red flags are much too vague and open to interpretation to be of investigative use. Consider the following:

Delay in reporting: What constitutes a delay? Does a delay constitute a victim calling a friend before calling 911, or is it a delay if a victim reports the crime three months later? This is a highly subjective criterion that requires more explanation to be useful as a potential Indicator.

Post-assault behavior: The post assault behaviors need to be spelled out. Are the authors referring to the victim laughing, becoming hysterical, crying, and/ or not crying at inappropriate moments? Without some kind of detail and elucidation, this red flag will be difficult to apply to an actual case.

Accusing a stranger: The authors of this work have found that many false reporters will actually name a suspect in their complaint. This may not constitute the majority of false report cases that the authors have investigated, but there have been far too many for us to agree that this is a red flag. In any case, this is a behavior that begs serious study before more can be inferred from its mere occurrence.

Writing on the body: While this occurred in the Tawana Brawley case, it has occurred infrequently in the authors' case experience. If it can be determined through crime reconstruction and/ or wound pattern analysis whether the victim could have made the injury, then this behavior has value to the investigation. If it cannot, merely the existence of such evidence would seem to indicate little. This too is a behavior that begs serious study before more can be inferred from its mere occurrence.

Hibler & McDowell

Hibler & McDowell (1995) propose a strategy for interviewing a potential false reporter. They suggest that the investigator utilize a supervisor or co-worker to act as a "second opinion" by having this person speak with the victim, and perhaps confront them with inconsistencies, during or after the interview. As for the initial interviewer, they write, "It would be counterproductive for this person to voice any doubts as to the veracity of her report." They point out that the "principal investigator needs to be available to the person alleging rape and should maintain a nonjudgmental, supportive, and sympathetic relationship with her. Issues regarding unresolved inconsistencies, conflicts, or the lack of supporting data should be made by an investigative supervisor or coworker. In this way, the vital relationship between the complainant and the principal investigator can be maintained and perhaps even improved."

There are several problems with this suggestion:

If there are any doubts about the veracity of the victim's story, the person in the best position to examine those doubts is the one who knows more about the case than anyone else: the principal investigator. A coworker or investigative supervisor very often lacks knowledge of the details of the case in question. With false reports, a working knowledge of the details is everything.

If there are doubts, and these doubts are supported by physical evidence, the investigator must explain to the alleged victim that he/she knows that they are not telling the truth. This is where interviewing skills come into play. There are many ways to let someone know that you are aware that they are lying. And yes, it is possible to be nonjudgmental, supportive and sympathetic at this point in the interview. The investigator does not have to blurt out, "I know you are lying!" They may use other, more gentle tactics. In fact, these are the same tactics they might use when interviewing a suspect in a rape case.

Hibler & McDowell (1995) fail to address the issue of Miranda warnings. The Miranda warnings are typically read to a suspect when there exists custody and interrogation. The courts have interpreted custody and interrogation in many different ways. In some jurisdictions Miranda warnings do not have to be read to a suspect who is being interrogated in a police facility unless he is not free to go. In others it is common practice to issue the warnings to any suspect interviewed in a police facility, whether they are free to go or not. At some point in the interview the investigator may have evidence that disputes the alleged victim's story. This evidence may be so strong that the investigator plans to arrest the alleged victim. In this case, in some jurisdictions, it is best to read the alleged victim (who is now a suspect in a criminal investigation) their Miranda warnings. This action alone may be effective in obtaining a confession from a false reporter.

An investigative supervisor may lack the skills necessary to conduct a proper interview of the alleged victim. While this is not always the case, many investigative supervisors have backgrounds in patrol, or other duties unrelated to criminal investigation.

Quite often the relationship of the investigator and the alleged victim, now the perpetrator, is improved after they have been confronted and have subsequently confessed. The victim may feel relieved of a burden and may actually thank the investigator for helping them through a troubled time in their lives. This occurs regularly in the advent of a false reporter that was given the opportunity to confess by a deliberate and thorough interview.

In short, the belief that bringing in another investigator or supervisor to interview the alleged victim will prove any more successful than having the principal investigator conduct the interview is false, and furthermore a waste of investigative time and manpower. The principal investigator should be capable of conducting the interview and confronting false

reporters, as long as they have been well trained and have the support of their agency.

Brown, Crowley, Peck, & Slaughter

Brown, Crowley, Peck, & Slaughter (1997) conducted research to address the issue of genital injury in female sexual assault victims. This study examined 311 rape victims who entered San Luis Obispo General Hospital's emergency room in California between January of 1985 and December of 1993. The study also examined a control group of 75 women, from the same location and time period, who had engaged in consensual intercourse. Of those 75 women, 48 had initially been evaluated as victims of rape, but later admitted that their encounters had been consensual. Though not conducted to address the issue of false reports specifically, this study ultimately revealed a 13.37% rate of false rape reporters. This study, it should be remembered, involved victims and alleged victims that presented to an emergency room. This is necessarily a different sample than presents at police departments to merely file a report.

Investigative Suggestions

The literature review above demonstrates two things of significance to this paper. Firstly, investigators are very likely to encounter a false report if they work sex crimes. Secondly, due to the dearth of literature and the limited investigative experience behind it, investigators will be unprepared when this happens. The section that follows is intended to be a general guide for such investigators, until such time as better and more vigorous research can be published on the subject.

The Interview - A Frame by Frame Analysis

The interview with the alleged victim of sexual assault is perhaps the most vital part of a sex crime investigator's effort to establish the facts of a case. Unfortunately, it is common for even seasoned investigators to accept an alleged victim's statement or story without question or suspicion. This may arise out of a fear of disturbing the alleged victim, being viewed as politically incorrect by victim advocates and colleagues, or lack of knowledge about the investigation of potential false reports. It may also arise out of a common problem that inhabits much of police culture: investigative apathy. Many investigators will go to great lengths to explain away factual inconsistencies in an alleged victim's story. Inconsistencies that have been explained away by the investigator in this manner, rather than actually investigated, should be treated as suspect. Whatever the case, there is no legitimate reason to avoid a detailed, frame-by-frame examination of the logic and rationale in any victim's statement. Regardless of the consequences, every alleged victim's statement must be examined thoroughly and enthusiastically. If there are breaks in the logic, they must be explained through a rigorous process of investigation.

It is important to note that the current investigative mindset that can provide for the failure to correctly identify and investigate false reports to their fullest conclusion is promulgated in an overall political environment that sanctions such identifications and investigations. As discussed in Palmer & Thornhill (2000), "To some feminists, the concept of false rape allegation itself constitutes discriminatory harassment..." It is

not unreasonable in such an environment for investigators to be terrified that the investigation of a false report will bring about the often brutal derision of colleagues, superiors, the media, victims advocates, and the general public. In fact, such derision and criticism is levied upon those who investigate such crimes daily.

Example: A woman is gently, but insistently coerced by her husband into reporting a rape to the police. The alleged crime occurred several days prior to her report and she had not sought medical attention. The victim stated that as she was walking to work in Midtown Manhattan she was accosted on a very busy street corner by several masked men. These men allegedly forced her into the backseat of a car at gunpoint and drove her uptown to an unknown apartment building. There were no witnesses and no calls made to 911 or the police regarding this or related incidents. She stated she was unsure of the exact location where she was taken. She also stated she was taken up the stairs and led inside an apartment where she was locked in a room by herself. She stated that several males entered the room at different times and raped her over and over again for several days. She also stated that the men forced her to ingest cocaine during this time. The woman stated that she was able to escape the room and then the apartment when her captors had fallen asleep. The victim also identified a suspect by name later on in the investigation.

This victim, when confronted with the inconsistencies in her statement, which were easily revealed by a thorough frame-by-frame analysis, admitted that she had lied about the rape in order to cover up the fact that she had been on a cocaine binge and had not returned home for several days.

While the above example is largely based on a single case from the authors' files, it accurately reflects the authors' case experience.

Frame-by-Frame Analysis is a very important interview concept that all sex crimes investigators should consider when interviewing a victim (or an offender for that matter). The best way to explain this concept is to compare it to a film. If we watch a film in real time, we may understand what is going on but we might not see all of the details. If we then run the film in slow motion, frame-by-frame, we are better able to recognize the minute details of the action. The sex crimes investigator must use this concept if they wish to capture all of the details of the crime. A thorough Frame-by-Frame Analysis can act as the gateway to identifying false report cases.

False Report Interview Strategy

False reporters may report their allegations to the police in the same way that real victims do. The sex crimes investigator will want to treat the potential false report case the same as any other, up until the point of the second part of the formal interview, the frame-by-frame analysis. This is where the investigator should confront the alleged victim with any contradictions between their statement and the physical evidence. Any contradiction in the victim's statement needs to be explained by the victim, NOT the investigator. The investigator should never accept contradictory statements in the victim's statement because the victim was upset or experiencing trauma. These contradictions must be explained logically.

Example: A victim states that a male followed her from behind into her building. She said that she got on the elevator along with the suspect and she pushed the button for her floor. According to her, the elevator did not stop on her floor but went to the roof. An examination of the elevator revealed that this does not happen. If the button to a floor is pushed, the elevator stops on that floor. This victim also stated that the suspect took her out on the roof of the building, a housing project, and threw her down. She stated that she was on her back for some time while the offender attacked her. The roof of this building was filthy; debris was everywhere. You couldn't walk a foot without getting tar and stones on your shoes. An examination of the outside of the victim's clothing revealed no dirt, tar, stones or any other debris. The clothing looked brand new. Needless to say, this case turned out to be a false Report.

The investigator will then want to say something like, "I have been investigating sex crimes for X amount of years and I have interviewed many girls/guys who have for one reason or another not told the whole truth. I know you're not telling me the whole truth but I also know that you seem like a good person. I'm sure there is a perfectly good reason why you are not telling the truth. Without the truth I can't help you with your problem. I know you have a problem or you wouldn't be here today. The problem with not telling the whole truth is that it starts off like a small snowball rolling downhill and as it picks up speed it gets bigger and bigger. In the end it can crush you. Let's stop the snowball before it gets too big because right now it is out of control."

At some point it may be fruitful for the sex crimes investigator to explain that they know the reporter is not telling the whole truth and then leave the room for a few minutes so that the reporter can think about what has transpired. Quite often, upon re-entering the room, the sex crimes investigator will find the victim crying and the confession will be Near.

If the victim does not confess right away, the investigator must keep at it. The investigator should not raise their temper in any way as this will only serve to make the reporter more defensive. The investigator should remain calm and confident throughout the interview. The most important thing to remember when dealing with a false reporter is to remain confident. When the sex crimes investigator is not confident, the false reporter will undoubtedly see this, and in turn they will feel more certain that the truth will not be revealed.

At some point during this interview the investigator may be convinced that the false reporter is lying. In this case, it is recommended that the investigator inform the false reporter that they are now a suspect in a criminal investigation, and then read them their Miranda warnings.

In order to know exactly the attitude to be maintained towards what has passed, all the circumstances of the crime must be clearly taken into account and submitted to strict logical examination from their commencement to their last stage. If at a given moment something has not been explained, suspicion is justified and pause must be made at the point where the logical sequence is broken, for the purpose of examining

if there is no better way of explaining the fact. If one is found the rest of the inquiry is easy (Gross, 1949).

The BAFRI

As suggested by the dearth of research in the area of false rape allegations, and the lack of investigator awareness and willingness to investigate such instances, the need for tools to assess potential false reports is not being met or even pursued. The authors, using their collective education, training, and experience, have devised the following index to help meet that need.

The Baeza False Report Index (BAFRI)

Provided below is a list of false report red flags that every investigator (and subsequently every property owner and attorney) should be aware of when reviewing or investigating any case that involves an alleged sex Crime.

One or more of the circumstantial red flags described in this index has surfaced in most, if not all, of the false reports investigated by the Authors:

A female victim has demanded to speak with a female officer or investigator (this excludes those cases in which a male officer or investigator has acted inappropriately towards the female);

A female victim's husband, boyfriend, or other intimate partner has forced her to report the alleged crime, rather than having reported the crime of her own volition;

A victim's parents have forced them to report the alleged crime, rather than having reported the crime of their own volition;

A victim, most often underage (less than 18 years old), has returned home after their curfew;

A victim states that they were abducted at a busy intersection (or some other very public location) during the day, and there are no witnesses to the incident;

A victim states that they were attacked by a masked offender in the middle of the day on a busy street (paradoxical offender behavior);

A victim is in a drug rehabilitation program and is out past curfew;

A pregnant female victim is forced by a parent or guardian, to report the crime to police;

A victim cannot describe the suspect nor can they provide details of the crime;

A victim has previously been charged with falsely reporting an incident;

A victim has previously reported a similar crime to the police;

A victim focuses on relocating to a new home or apartment during the investigation;

A victim focuses on initiating a lawsuit or on monetary gain during the investigation;

A victim displays "T.V." behavior when initiating a complaint, mimicking the way that stereotypical victims act on television and in film (hysterical, demand female officer, catatonic, etc.);

A victim cries at crucial points in the interview to avoid answering certain questions;

A victim has a long psychiatric history.

At this point it must be made absolutely clear that the authors intend this index to be used as a guide, or investigative tool, only. These items are not 100% foolproof indicators that the victim is falsely reporting a crime. To the professional investigator or forensic practitioner, these red flags suggest merely the possibility that the allegations may be false. There is no substitute for a thorough investigation or investigative case analysis.

Motivations for False Reports

Some of the more common motivations that can impel the false reporter are provided below. As discussed in Turvey (1999), with any list of potential motives for human behavior there is no bright yellow line between them. Hence, multiple motives may reside in a single false reporter.

Revenge

This includes situations where the reporter is angry at the accused and expresses that anger as a false report. It also occurs in child custody cases (mentioned below).

The Need for Attention

This category may include those who are said to be "crying out for help" as well as those with some degree of personality disorder or mental

illness.

Medical Treatment

Often this motivation is utilized to obtain treatment for a sexually transmitted disease. It can also occur when the reporter seeks treatment for AIDS or a pregnancy.

Profit Motive

This may include the filing of a lawsuit by the reporter as well as the desire for new and better housing.

Failure of Customer to Pay Prostitute ("theft of services")

In this case a prostitute may not have received payment from his or her customer or "john."

As an Explanation for Pregnancy or Sexually Transmitted Disease

An unwanted or unexpected pregnancy or sexually transmitted disease may be explained by claiming rape. Although this is seen more commonly in juveniles, this reasoning as well motivates adults.

Alibi (out past curfew, infidelity, etc...)

This is a common motivation for juveniles and adults alike. The reporter may be so desperate for an alibi to explain what they deem inappropriate behavior that they will use a claim of rape to alleviate this problem.

New Housing (especially in more populated cities)

A desire for new housing will often motivate individuals to falsely report a rape to authorities. This is especially common in areas where rent controlled housing is offered by the government. There are long waiting lists to get into the most desirable housing projects. Some residents believe that a way to jump to the front of this list is to claim that a rape or other attack occurred inside the individual's current apartment.

Child Custody

Child custody battles can, and sometimes do, include allegations of rape or sexual abuse, made by one side or the other, in an attempt to gain custody of the child in question.

Attempt to Veil a Reoccurrence of Drug or Alcohol Use

This category includes individuals who have abstained from the use of drugs or alcohol for some period of time and then suddenly relapse making it necessary for them to develop an excuse for their behavior (often they will claim some unknown individual raped them and forced them to ingest drugs or alcohol).

Guilt Feelings after a Consensual Sexual Encounter

This is common in juvenile dating situations in which one of the parties of a consensual sexual encounter later feels guilty about their behavior and to explain this behavior to themselves or to others, they falsely claim that they were raped.

Conclusions

False reports are a problem for all of the professional communities that encounter them. Law enforcement resources are drained away from actual

victims by such cases. Innocent citizens are exposed to the possibility of false accusations by such cases. Legitimate victims of sexual assault are exposed to the possibility of encountering overtaxed law enforcement resources that are inadequate to the task of investigating their cases thoroughly or competently. Building owners and insurance companies are exposed to the threat of costly premises liability lawsuits by such cases. As stated in Gross (1924):

Not only must the self-made victim be exposed, but innocent people who may be suspected must be protected.

Furthermore, research relating to sexual assault, which is often used as the basis for resource allocation and expert testimony, is necessarily biased or otherwise compromised when such cases go unidentified. This is a problem in both criminal and civil cases, especially those involving premises liability where talk of such cases is rare. The need for more and better research in this area cannot be emphasized too strongly. Such research could lead to more relevant tools for case assessment, and should include validation studies of tools such as those presented in the BAFRI and Hibler & McDowell (1995).

Footnotes

Last year, an editorial in the New York Post on the now infamous Oliver Jovanovic false report case, Dunleavy (1999) quoted District Attorney Linda Fairstein from an interview in Penthouse Magazine where she stated, "There are about 4,000 reports of rape each year in Manhattan, of these half of them didn't happen." In a more recent article, it was stated that out of 2000 uninvestigated cases in Philadelphia, PA from 1995-1997, investigators determined that "600 were false reports or allegations that did not amount to crimes" (Inquirer Staff, 2000).

This opinion is based on our discussions with fellow investigators. It is also based on the fact that a number of the articles that the authors reviewed for this paper received scathing commentary from the professional community. A common complaint was that the identification and persecution of false reporters causes legitimate victims to fear reporting their crime to law enforcement.

Most of these red flags also appear in Aiken, Burgess & Hazelwood (1995). More specifically, the section regarding false report red flags, "Red Flags of False Rape Allegations" was written by Charles P. McDowell and Neil S. Hibler (Hibler & McDowell, 1995).

This occurs because once the alleged victim knows that the investigator is aware of their deception, and that the situation is serious, they may realize that it would be a grave error to continue with their fabrication. In such instances, it is best to read the alleged victim their Miranda warnings, leave the room, and then give them an opportunity to reflect on the gravity of their circumstances. Upon

reentering the interview room, an investigator may find the alleged victim eager to confess. At this point, the victim should be charged with some kind of crime along the lines of falsely reporting a crime.

This sentiment is echoed today by Manhattan Sex Crimes Prosecutor Linda Fairstein, who states, "False reports of rape do occur. . . [and] have made it difficult for legitimate victims to be taken seriously. . . . For all prosecutors . . . it is critical to acknowledge that false accusations of rape are made."

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