

Evaluating and Measuring Law Enforcement Success

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After decades of feminist lobbying and demands for better treatment of rape victims, many police agencies are still stuck in a 1950s-era view of sexual assault.

In many cities across the United States, Chiefs of Police, Sheriff's and Campus Administrators report their crime trends at the close of the year, often directly to the media. In addition to crime statistics, arrest statistics and clearance rates are commonly used to measure successes and failures within their jurisdictions.

We need to create new measures of success for law enforcement. But first, we need to begin with identifying and understanding the roles of members of our own sexual assault response teams. Many advocates, medical personnel and other members of the sexual assault response team see a police officer's primary role as enforcement or arrest, especially when responding to crimes like sexual assault where an arrest is often demanded. It is important to recognize that an officer's first responsibility is actually preservation of life; to protect and serve. This means law enforcement should provide the best service possible regardless of whether anyone believes the case would be successfully prosecuted.

When we fail to establish realistic, meaningful evaluation tools, it is too easy to turn our back on difficult investigations (the majority of sexual assaults). In addition, we contribute to the burn out of the professionals who serve victims of sexual assault because the measure of success we have established is often unattainable, resulting in constant disappointment, frustration and job dissatisfaction. Unfortunately, this frustration is often transmitted to the victim in many different ways.

Example:

If the victim was engaged in behavior that increased her risk of sexual assault at the time of the crime, her credibility may be in question. Based on experience, the detective may believe the prosecutor would not file criminal charges against the suspect because the case may not have jury appeal. The detective may form a premature conclusion that it would be a waste of his time to thoroughly investigate the case if his personal measure of success or his supervisor's evaluation of his performance is based on arrest and prosecution rather than self-initiative, investigative skills, innovation, tenacity, validation and compassion.

In addition to setting members of sexual assault response teams up for failure, published arrest rates have absolutely nothing to do with the final outcome of a crime report. Because the majority of sexual assault investigations are delayed reports involving non-strangers, with little or no evidence, well trained field officers and sex crimes detectives know that an arrest should frequently be delayed pending a thorough investigation.

A thorough investigation might involve the use of pretext phone calls, search warrants, and forensic evidence including possible DNA analysis and toxicology, witness interviews and a

search for prior victims. The investigation could take months. Many of these cases are submitted to the prosecuting attorney or the grand jury when an arrest has never been made. Depending on the results, an arrest may never be made, however, it does not mean the investigating officer didn't do a thorough job. On the other hand, if an arrest is made prematurely, the prosecutor will most likely reject the case. Although the investigating agency can always continue the investigation, this may be unlikely if the detective is handed another case the same day or the next day.

When we examine arrest rates, we must also look at the outcome of those arrests. A detective may provide a supervisor or prosecuting attorney with a brief verbal summary of the limited facts as he knows them at the time. The prosecutor may be reluctant to file charges based on what is immediately available. The detective may take this as a signal that the prosecuting attorney isn't interested in the case and interprets the reaction as a rejection.

Both law enforcement and prosecuting attorneys should be held to the highest standards. How many of the investigations were conducted thoroughly? Was the prosecuting attorney provided with complete reports that would provide enough information to make an appropriate filing decision? If an arrest was made, how many of those arrests were referred to the prosecuting attorney, how many of the suspects were charged by the prosecutors' office, how many went to trial, how many accepted plea bargains and for what charge? Without this information, an arrest rate is meaningless.

Traditionally, statistics focus on how many cases are cleared. Cleared is often interpreted as "solved" although this is inaccurate. Law enforcement can clear a reported offense when at least one person is arrested and charged with the offense AND turned over to the court for prosecution. Law enforcement may also clear a crime by exception when some element beyond law enforcement control precludes issuing formal charges against the offender such as:

- The death of the offender or a deathbed confession,
- The victim's refusal to cooperate with prosecution AFTER the offender has been identified, and
- The offender was arrested and prosecuted for another crime in a different jurisdiction.

In all exceptional clearances, law enforcement MUST:

- Identify the offender,
- Have enough evidence to support arrest, and
- Know the offender's location.

Other methods of Clearance include:

- The case is issued or rejected by the prosecutor.
- The crime occurred in another jurisdiction.
- Unfounded, meaning law enforcement determines the report is baseless OR false.

These numbers can be deceiving, especially in the case of sexual assault where generally only forcible rape is tracked. The FBI reporting requirements are clear that a case cannot be closed because an arrest is not made or the victim refuses to participate. However, other factors typically responsible for unfounded declarations are:

- Victim's late reporting
- Lack of corroborating evidence
- Lack of cooperation by the victim and/or witnesses
- Reporting in the wrong jurisdiction
- Discrepancies in the victim's story
- Wrong address given by the victim
- Victim's drunkenness
- Victim's drug usage
- Victim's being thought a prostitute
- Victim's uncertainty of events
- Victim's belligerence
- The police are unable to locate the victim
- The victim does not follow through with prosecution (fails to return phone calls or make appointments)
- The victim recants
- No assailant can be identified

Even when cases are seen as legitimate, they are often improperly unfounded because they are just plain difficult to investigate. Although none of the reasons cited above are legitimate reasons for unfounding a sexual assault case, there are many examples of departments routinely using unfounding as a mechanism for improperly disposing of "difficult cases." The consequences of improperly unfounding sexual assault cases are tragic, for victims and the community.

For police, high rates of unfounding can lead to scrutiny and public pressure. Cities recently under fire include Atlanta, Baltimore, Detroit, and Philadelphia.

Improperly unfounding cases represents a miscarriage of justice and a threat to public safety.

For victims whose cases are improperly unfounded, this practice creates a sense of betrayal and distrust and can have devastating effects on the victim's recovery.

Public awareness that sexual assault cases are not taken seriously will inevitably affect the willingness of future victims to report to police.

We must first decide on a national standard for "baseless" and "false" allegations before we can begin to hold police officers and deputies responsible for the national reporting problem. Unfortunately, law enforcement is still recovering from an era when success was determined by the number of arrests, tickets, or field contacts made by an officer. Whereas Sheriffs, Chiefs of Police, Commanding Officers and Campus Administrators, are often times evaluated by the crime rates in their jurisdictions, and how those crimes are cleared, police supervisors have used these same rates to evaluate the performance of an officer or detective.

Many Police Departments establish their goals or objectives based on arrest and clearance rates. As an example, a typical Sex Crimes Unit might strive to clear 50 percent of the cases they receive. In reality, these are poor evaluation tools since good detectives know that clearance rates have little to do with the quality of an investigation.

Example:

While working Crimes Against Persons, long before the San Diego Police Department had a Domestic Violence Unit, I worked with a detective who spent a great deal of time belittling domestic violence victims and talking them out of prosecution. He did this so that he wouldn't have to write a report and refer the investigation to the prosecutor's office. If he could talk the victim out of prosecution, he could cancel the case exceptional because the suspect was identified but the victim refused to prosecute. In reality, this detective did a disservice to the community, the Department and the victim, but on paper the cancellation contributed to the stated goals of the Department and that particular Unit. This particular detective's supervisor should have been looking at the number of cases canceled exceptional and the number of cases that were actually referred for prosecution for a better picture of what was actually taking place in the Unit.

Supervisors and Police Administrators must understand the complexity of sexual assault cases and specialized units should be created whenever possible. If the agency isn't large enough to create a specialized Unit, Departments can identify experts within their own agency or within their County or in some very rural areas, across counties. Agencies with smaller population bases can share cases and attend peer reviews or system review meetings to identify enough cases to effectively hone investigative and forensic examiner skills. Once proper policies and procedures are in place, training deficiencies need to be addressed on a case-by-case basis. In isolated cases where a supervisor's investigation or an internal affairs' investigation indicates there was malice or negligence, discipline may be warranted. However in most cases, I believe you will find that officers are struggling to do the right thing but have been given little support, guidance and training.

Notes:

1. Crime in the United States, 1997 Uniform Crime Report, US Department of Justice, Federal Bureau of Investigation Release Date: Sunday, November 23, 1998.
2. "False Rape Allegations", Archives of Sexual Behavior, 1994, Volume 23, No. 1. By Eugene J Kanin, PhD, Department of Sociology and Anthropology, Purdue University, Lafayette, Indiana
3. Clark and Lewis, 1977; Hursch, 1977; Katz and Mazur, 19789; Kanin , 1985: LaFree, 1989