



## False Allegations, Case Unfounding and Victim Recantations in the Context of Sexual Assault\*

This position paper reflects the views of the Criminal Justice Committee and was approved by the membership of the Attorney General's Sexual Assault Task Force (Task Force) on January 10, 2008.

The public's interest in determining the credibility of sexual assault reports has markedly increased as news reports have shifted from stranger assailants to known assailants. With that interest has come more discussion, news articles and papers on the prevalence of false allegations of reported sexual assault. Information and debate on false allegations has routinely used victim recantations as an indication of a false allegation. Additionally, the term "unfounded" has been used synonymously with "false allegation" and "recantation," further blurring these three very distinct topics. The Criminal Justice Committee developed this position paper to clarify and distinguish victim recantations, false allegations and case unfounding in the interest of ensuring that every victim of sexual assault receive a consistent, professional and knowledgeable response.

### Definitions

- **Victim Recantation** is a retraction or withdrawal of a reported sexual assault. Recantations are routinely used by victims to disengage the criminal justice system response and are therefore **not**, by themselves, indicative of a false report.
- **False Allegation/Report** is a reported crime of sexual assault, to a law enforcement agency, that an investigation factually proves never occurred.
- **Unfounding** is a method of investigative case closure (or clearance) intended to denote a specific outcome of an investigation. Unfounded is **not** synonymous with false allegation. Below are two distinct definitions of Unfounded, one definition is used in child abuse investigations by the Department of Human Services in Oregon and the other definition is used by law enforcement agencies nationwide.
  - **Oregon Department of Human Services, Child Protective Services** – Oregon Administrative Rules 413-015-1000(2)(b) defines "Unfounded" to mean that no evidence of child abuse or neglect was identified or disclosed.
  - **Federal Bureau of Investigation, Uniform Crime Reporting**—Defines Case Unfounding, used by law enforcement agencies, as a reported case that is investigated and found to be false or baseless.

### Victim Recantations

Recantation is most often used by victims to disengage the criminal justice, or other systems, because they no longer wish to participate. Victims may not realize the toll that a criminal investigation and trial will take on them mentally, emotionally, physically, and financially. As a

result they may want their involvement in the process to end. Moreover, since most cases of sexual assault are committed by someone known to the victim, pressure from the offender or concern for the offender's well being may also be a factor.

While most of society agrees that sexual assault is a threat to public safety, debate continues over what constitutes rape and sexual violence. Representations of rape and sexual violence in the media and in pop culture would suggest that "stranger danger" continues to be a woman's top concern. Risk reduction is focused on telling women to walk in well-lit areas, avoid late night outings unless they have a companion, and to carry mace. College campuses across America have installed emergency call boxes and extra lighting. Email warnings are frequently circulated advising women against having long hair, and ponytails and wearing a particular type of clothing. We might conclude from these warnings that rape is most often committed by strangers who stalk and kidnap women and use weapons and physical violence.

When reports of sexual assault fall outside of this widely accepted stereotype of rape, victims are likely to be met with skepticism and mistrust by the community and responders. Moreover, victims themselves are subject to these same erroneous messages and as a result may doubt their experience if it does not fit within the most widely accepted representation of sexual assault.

The two most recent national surveys on sexual violence -- the National Violence Against Women Survey and the National Women's Survey -- suggest the reality is that the vast majority of reported rapes fall outside of this narrow definition. In fact, over 75% of completed rapes occurred between a victim and an assailant known to each other.<sup>1</sup> Studies estimate that more than 70% of victims sustained no physical injuries from the assault<sup>2</sup> and as many as 84% of victims reported no weapon was used.<sup>3</sup>

Nonetheless, victims are likely to be reluctant to come forward, and unsure of themselves and whether their disclosure will be believed. Reporting and disclosure is more akin to a process than an event. That is, because of the shame, self-blame, and doubt victims routinely experience internally, disclosure is often a process of sharing pieces of information in order to test for a supportive response.<sup>4</sup> In practice this means that victims, who are already likely to be reluctant, can be easily dissuaded or deterred from reporting the incident and participating in the investigation or prosecution, depending on the response received from peer groups, family, the criminal justice system and other responders. Moreover, the peer group and family from which the victim may seek support may also be the same support group that the offender relies on in his denial – further complicating a victim's choice to report or participate in criminal prosecution.

**Internal Influences**—Victims may feel embarrassed, ashamed and even unsure of what happened to them. Victims may believe they are in part responsible for the assault, particularly if they engaged in prior consensual sexual intimacy or the use of alcohol and other drugs. Finally, victims may fear that they will not be believed if they do report,

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<sup>1</sup> P. Tjaden and N. Thoennes, Prevalence, Incidence, and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey, November 1998

<sup>2</sup> Kilpatrick, Edmunds, and Seymour, National Women's Study, 1992.

<sup>3</sup> L.A. Greenfeld, Sex Offenses and Offenders An Analysis of Data on Rape and Sexual Assault, Bureau of Justice Statistics, February 1997, NCJ-163392.

<sup>4</sup> Felson, Richard B. and Paré, Paul-Phillippe, "The Reporting of Domestic Violence and Sexual Assault by Nonstrangers to the Police," *Journal of Marriage and Family*, 67:597-610 (2005).

especially if their assault does not match society's perception of a stereotypical violent sexual assault.

**External Influences**—Victims may feel pressure from their friends, family or community to report or not report. Victims may feel pressure to hide particular personal behavior immediately prior to the assault (e.g. drug use, sexually transmitted infections, etc.) from friends and family as well as responders. Victims may also fear losing the support and/or care of a care provider or family member.

**System Influences**—Victims may withdraw their participation by way of recantation due to lengthy investigative delays, slow court dockets, or other time considerations, leaving the victim feeling uninformed or uninvolved in the decision making process. Victims may also experience non-supportive and even doubtful responders within the context of the system, leaving them with viable concerns about their protection and perceived credibility.

**Socio-Cultural Influences**—Besides not being believed, victims may feel particularly uncomfortable with specific humiliating facts about the assault, like sodomy. Victims may also be subject to isolation from their community (e.g. high school peer group) if the offender is well liked and respected. Victims may experience disapproval from family, co-workers, and other typical support groups (e.g. the faith community). Victims may consider the history of their community's relationship with the criminal justice system (e.g. African-American, Latino, etc.) and whether they will be viewed as less credible or likely to become subject to immigration issues. Victims have a criminal history or who engage in work or activities that are criminalized (e.g. women who prostitute) may be reluctant to participate for fear of reprisal by the system.

When a victim recants, additional inquiry is necessary to determine whether it was a result of system failure, witness tampering, or other factors out of the control of investigators and responders. While recantations can pose challenges for the criminal justice system, they should not in and of themselves deter an investigator or prosecutor from considering the viability of the case. Rather, responders, victims and the larger community are best served when the concerns and actions of the victim are understood and efforts are made to mitigate or address those concerns. A recantation should be viewed with caution and automatically trigger an investigation to establish the cause(s) of the recantation. Should the recantation be a result of duress that the victim experienced, prosecutors can educate the judge and jury on the cause(s) of the recantation.

### **False Allegations**

There is no conclusive study on the number of false allegations of sexual assault, and the studies and surveys that do exist include a wide range of estimated numbers.<sup>5</sup> Unfortunately, the study most often quoted is based entirely on victim recantations,<sup>6</sup> instead of complete investigations.

A false allegation is a report of sexual assault that never occurred. The challenge to investigating agencies is relatively simple—all reports determined to be false must factually prove through the

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<sup>5</sup> Presentation to Colorado Organization for Victim Assistance by M. McNally, J. Bennett, and A. Munch, September 1999, "estimates varied from 0% to 98%."

<sup>6</sup> Eugene Kanin, False Rape Allegations, Archives of Sexual Behavior Journal, February 1994, v23 n1 p81 (12).

course of an investigation that a crime did not occur. By definition, a false report would not include an incident where the investigation was unable to corroborate or substantiate a sex crime, nor would it include a situation in which the victim recants. Because recantation is used so frequently by victims to halt criminal justice involvement, it should never be seen, in and of itself, as an indication of a false report. Victim statements are often inconsistent and may also include partial truths and omissions. It is the investigator's responsibility to piece together a factual account of the assault—including an explanation of why there may be inconsistencies, partial truths and omissions. Finally, there may be situations in which a motive for falsifying a police report is legitimately identified; motive alone is not sufficient to prove that a sex crime was not committed or attempted.

### **Unfounding**

As defined earlier, unfounding is a method of investigative case closure (or clearance) intended to denote a specific outcome of an investigation. While both the DHS definition and the FBI definition include reports determined to be false, the unfounded category is not solely limited to cases determined to be false. It is critical to bear in mind that a report determined to be unfounded is **not** synonymous with a false allegation or report. This distinction is important enough that it is worth repeating – a report that has been unfounded is not the same as a false report (or false allegation).

The FBI definition of unfounded specifically refers to cases that are found to be false or baseless. As defined earlier in this paper, a false report (or allegation) is a sexual assault that is factually proven to have never occurred or been attempted. A baseless report, on the other hand, is a reported sexual assault that does not meet the elements of a crime – meaning that the incident that occurred did not involve criminal activity as defined by state statute (Oregon Revised Statutes). Typically a baseless report is the result of a mistake of law – the reporter believed that they were the victim of a crime when based on the state criminal code they were not.

### **Summary**

Improving the response to and reducing the incidence of sexual assault in Oregon and beyond requires systems and individuals to look at our assumptions about, understanding of, and policies and practices specific to sexual assault response. It is our professional responsibility to use language correctly and appropriately, to ensure that policies are clear and appropriate and that, ultimately, practice follows policy. Finally, given the complexity of the context in which sexual assault occurs, training that addresses technical and discipline-specific skills and the dynamics of sexual assault is imperative.

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