



DIM PROSPECTS

NAVIGATING THE PATH TO JUSTICE FOR
SEXUAL ASSAULT SURVIVORS BY DAWN REISS

SINCE 2010, ILLINOIS HAS BEEN PROCESSING A **BACKLOG OF 4,000 UNTESTED RAPE KITS**, SOME DATING BACK TO 1978. BUT ARE SURVIVORS FINDING SUCCESS IN THE SYSTEM?

Imagine you're a 10-year-old girl. Besides being worried about things other 4th graders worry about, you're constantly terrified of your stepfather. For over a year, he's raped you repeatedly. You turn 11 and decide you've had enough. You go to the hospital with your mother, mustering up courage to have a rape kit processed, which includes your first, painful gynecological examination. It's such a horrific experience that, years later, you don't even remember going through the process.

Except this isn't imaginary. It's a real case from Harvey, Illinois. In 1997, the Harvey Police Department interviewed the girl and questioned her stepfather, Robert Buchanan, a former Cook County corrections officer. Her statement was deemed "a credible account," especially with the semen found on her body, says Chicago Attorney Yao Dinizulu, who represents the now 25-year-old "Jane Doe" in a 30-count suit that names both Mr. Buchanan and the city of Harvey.

Despite the evidence, Mr. Buchanan was released; the rape kit was shelved and unprocessed for 10 years, according to Mr. Dinizulu. Time passed, and Mr. Buchanan was allowed back in the home. After a brief hiatus, he began to molest his stepdaughter again.

"At this point in time," Mr. Dinizulu says, "this young lady had spoken to all the people who should have protected her, so she never reported it again. She felt there was no one there to protect her."

"It wasn't shocking, but gut-wrenching," he adds. "It only takes a minimal amount of competence to process a rape kit, especially in this situation, with a minor. But there's a deliberate policy of not moving forward with these claims."

A NATIONAL EPIDEMIC

And it's not just happening in Harvey. Unprocessed rape kits (a set of tools used by medical professionals to collect physical evidence from a victim's body after a sexual assault allegation) are epidemic throughout Illinois and across the U.S.

Rape cases are notoriously underreported and difficult to pursue for a variety of reasons. Many in authoritative positions blame a victim's so-called "provocative" clothing as enticing the rapist. Others discount girls, women and some men who have survived date or spousal rape, or situations deemed "messy" by law enforcement, such as those with drugs involved or if the victim is a prostitute.

Even if a survivor came forward and went to a hospital to have a rape kit performed, it was up to the police detective who received the kit to decide whether it should be submitted as evidence and tested for DNA.

But in 2010, a two-year investigation by Human Rights Watch (HRW) found that many Illinois police simply shelved the rape kits, creating a backlog that went unnoticed for decades. Based on 127 of 264 jurisdictions in Illinois, HRW found that of 7,494 rape kits booked into evidence since 1995, only 1,474 could be confirmed as tested. This indicated that 80 percent of rape kits were never examined by the state; without a rape kit, investigations are stopped in their tracks.

In light of that evidence being made public, Illinois took a historic step in 2010: it enacted the Sexual Assault Evidence Submission Act "in response to mounting concerns that law enforcement agencies aren't automatically submitting physical evidence for inclusion in sexual assault investigations," according to the Illinois Attorney General's Office.

"It's been a historical problem to have survivors come forward," Attorney General Lisa Madigan says. "They didn't feel like their crime was being investigated. This is a way of pursuing justice on their behalf."

The law, the first of its kind in the U.S. for such strong rape kit reform, requires that every booked rape kit be tracked and sent to an Illinois State Police crime lab. It also set a timeline for processing more than 4,000 untested rape kits from various counties across Illinois.

"Without the law," Ms. Madigan says, "a person, most likely a child or woman, would have gone to the ER, endured the physiological trauma of being sexually assaulted and having a rape kit, and it wouldn't have guaranteed that the kit would be analyzed by the lab. This law ensures justice for a horrible crime."

It's an idea that's catching on: in spring of 2012, a bipartisan group, including Illinois Senator Mark Kirk, introduced the Sexual Assault Forensic Evidence Registry (SAFER) Act "to audit and reduce the backlog of untested rape kits sitting in the possession of law enforcement agencies across the country," which experts have pegged as high as 400,000.

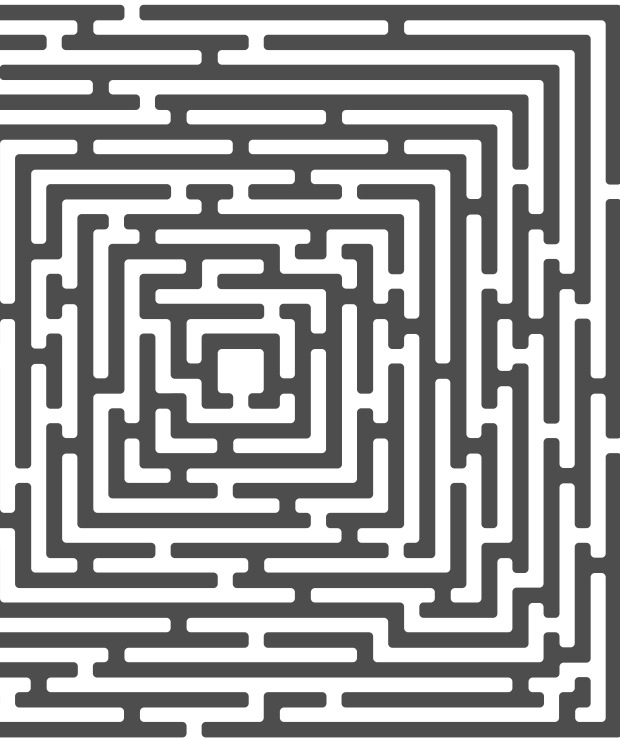
WHAT'S HAPPENED SINCE

In addition to being required to process all backlogged rape kits, the 2010 legislation introduced several important procedures. Police departments must submit all DNA evidence from reported sex crimes to one of the seven Illinois State Police crime labs, or one of two publicly funded crime labs in Wheaton and Vernon Hills, Illinois, within 10 days of collection from the hospital. The ISP lab must analyze the evidence within six months, but only, as the law stipulates as a contingency, "if sufficient staffing and resources are available."

As the commander of the Illinois State Police Forensic Laboratory System, Arlene Hall leads this process. She has worked for the state for 29 years, but was less than a year into her current position when news broke that police departments hadn't been turning over the rape kits.

"If anyone had asked me if I really thought we were getting all the cases, I would have sworn we were," she says. As of April 30, 2012, Ms. Hall says 4,139 backlogged kits have been reported by law enforcement agencies as needing to be submitted as evidence; 4,008 of those were expected to be submitted to the Illinois State Police Crime Lab system, with the additional 131 cases being processed by the Wheaton and Vernon Hills facilities. The oldest case involves a rape kit dating back to 1978.

The process is supposed to work like this: Once the lab receives a kit, it's logged in, marked with a case number and bar code, and reviewed to make sure it contains all the proper evidence. Most are shipped –



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except for cases that include evidence other than a kit, like blankets or other large items – and outsourced to be screened for biological material. If scientists find appropriate and sufficient biological material, according to Ms. Hall, then the kit undergoes a DNA analysis. For these kits, much of that initial screening and DNA testing has been outsourced to Orchid Cellmark, a DNA paternity testing laboratory, Ms. Hall explains, because of the sheer volume and time frame.

It costs about \$1,000 per case, but “it’s helping us move forward,” Ms. Hall says. Most of the funding, she notes, comes from the State Offender DNA Identification System Fund, where anyone convicted of a felony and certain other eligible crimes must provide DNA for inclusion in the database and pay \$250. Additional funding comes from two other sources: the State’s General Revenue fund, which is legislatively appropriated funding from taxes and other sources, and various federal grants, such as the Violence Against Women Act and the National Institute of Justice DNA Backlog Reduction Program. Altogether, Ms. Hall estimates the backlogged cases will cost approximately \$1.8 million by the end of this fiscal year (June 30, 2012) and a total of \$2.6 million through the estimated completion date of June 30, 2014.

If a DNA profile not from the victim is found in the outsourced rape kit, the DNA profile data is shipped back to Illinois State Police. Then it’s reviewed, and, if appropriate – according to standards set by the FBI – uploaded and tracked in the FBI’s Combined DNA Index System (CODIS) database. The goal is to see if the DNA collected from the rape kit matches any DNA already in the database.

With 2,049 cases already processed, Ms. Hall reports that there have been 445 CODIS “hits,” or matches, to other DNA profiles in the database, or approximately a 22 percent “hit rate.”

The significance of any CODIS hit, however, “can only be determined through additional investigation by the law enforcement agen-

cy,” Ms. Hall says, referring to the police departments and detectives who originally handled the case.

Now, the Illinois Coalition Against Sexual Assault (ICASA), the Attorney General’s Office and Ms. Hall will discuss this new development to determine how to proceed with this information, says Cara Smith, public access counselor for the Office of the Attorney General. As of press time, these conversations were still in development.

“One of the things that still needs to be done is to identify what is their significance,” Ms. Madigan says. “Are these cold cases that haven’t been fully investigated and need to be pursued? Has an arrest already been made? We need to do an analysis to determine the impact.”

In addition to the CODIS hits, rape kits are crucial for matching DNA when a suspect has already been identified in a particular case; according to the Rape, Abuse and Incest National Network (RAINN), almost two-thirds of rapes are completed by someone known to the victim. Plus, the DNA profile remains on file; if the perpetrator attacks again, police are able to more easily connect crimes committed by a serial rapist.

State police are already seeing “a significant increase in submitted rape kits,” Ms. Madigan adds. This increase averages out to 60 more kits submitted each month, or 720 each year, compared to before the law.

Surprisingly, Chicago had a minimal number of backlogged cases – 21 total, says Sergeant Kathryn Warner, commanding officer of the Forensic DNA Unit for the Chicago Police Department, which processed 1,345 rape cases in 2011.

That’s partly because an Illinois Department of Corrections state law regarding CODIS changed in 2003; starting in 2005, Ms. Warner says, the City of Chicago changed its rules to comply, requiring Chicago Police Department detectives to submit all rape kits. Although Ms. Warner says CODIS has “been around for a long time,” there were limited resources and DNA samples until recently, when some states

began including DNA samples for anyone who is arrested in addition to anyone convicted of a felony. It’s something Illinois is contemplating, since it currently only requires convicted felons to submit DNA.

“We do feel the legislation is really helping. Largely, the state wasn’t really focused on this issue a few years ago,” says Jobi Cates, director of the Chicago office of Human Rights Watch. “In a state where resources are shrinking, the Attorney General’s Office has put resources toward an important matter. Rape kits are essential. They’re critical evidence in supporting a victim’s claim.”

Still, Ms. Cates points out, in 69 percent of reported sexual assault cases, no rape kit is performed.

REALITY CHECK

Many advocates say victims are discouraged and disheartened by a system that still needs a lot of work. Currently, no system is in place for survivors to learn where they are in the process, besides checking in with the police detective who handled the initial complaint. Many rape advocates and leaders in sexual assault associations interviewed for this story consistently mentioned that the people they counseled had trouble following up and getting answers as to their case status.

“Many victims are still being told their case is suspended, pending the rape kit, and they never hear from a detective again,” says Sharmili Majmudar, executive director of Rape Victim Advocates, a non-profit rape crisis center in Chicago. “Even very proactive victims call and call, and don’t find out. If there was any way to have some sort of notification system of the status of the kit, it would be meaningful.”

“A lot of detectives won’t give you information if you don’t have the rape kit,” adds Neusa Gaytan, program director for Mujeres Latinas en Acción, an agency that offers a comprehensive array of social services, including sexual assault advocacy. “It’s frustrating, because if the person didn’t get arrested, the family could be in danger.”

“I’ve had people call about rape kits,” Ms. Hall says, “and I can’t tell them anything. I don’t know if [the person on the phone] is truly the victim or the suspect.” If she’s called to testify for a rape case, she can’t release information to anyone in order to remain unbiased and credible in court. “Everything has to remain strictly confidential to the client, the detectives who are investigating the case on behalf of agencies,” Ms. Hall says. As a result, “We can’t even acknowledge we have the case.”

Since rape kits only define the actual act, not consent, rape victim advocates consistently emphasize the criticality of having a police officer investigate a potential crime immediately after it’s committed, not months later, after a rape kit is processed.

Both Ms. Gaytan and Ms. Majmudar confirm that the turnaround time for processing a rape has improved since the legislation. According to Ms. Majmudar, it now averages three to four months, compared

with the pre-legislation time of six to nine months, which could stretch into a year. Ms. Warner notes that the typical turnaround time for a preliminary report in Chicago is two months – if there’s evidence.

“There are expectations of survivors that it’s like *CSI*,” Ms. Warner says. “If the DNA is not there, it’s not there. We can’t get it somewhere else, which is why the rape kit is so important.”

Still, Ms. Majmudar points out that New York City – with a population of 8.1 million compared to Chicago’s 2.6 million in 2010 – processes rape kits in six weeks.

“Getting a conviction of a sexually violent crime is still near to impossible,” says Yesenia Romo, director of YWCA Metropolitan Chicago’s Sexual Violence and Support Services. “Even when victims are doing everything they’re supposed to do – going to hospital, having a rape kit and reporting the crime – when it comes to the actual process of getting it processed, they become very frustrated and in some cases give up hope. We still need to build up the trust in the justice system so that victims feel confident they aren’t just going through the motions by completing a rape kit.”

Many advocates also have concerns about the Illinois police truly turning in every rape kit, which Ms. Smith counters. “We’re confident all kits are being submitted,” she says, “but we need to do spot checking.”

In Illinois and the U.S., there’s no shortage of Jane Does like the now 25-year-old woman Mr. Dinizulu mentioned. He’s already represented

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“about five other rape cases,” besides the two he is currently handling. The second is a federal class-action lawsuit against the city of Harvey, Illinois, for failing to process 200 rape kits, stalling police action on open investigations and eroding valuable biological evidence.

The charge is led by a 22-year-old woman who says she was assaulted in May 2007, at age 17, by an acquaintance. It was only after the Cook County State’s Attorney’s Office, the Sheriff’s Office and the Illinois State Police conducted a raid in 2007 on the Harvey Police Department – after it failed to solve any of the nine homicides in 2005 – that the untested rape kits were discovered and the investigations of dozens of sexual assault crimes were reopened. “It seemed like they deliberately misplaced the rape kit so it wouldn’t be found,” Mr. Dinizulu says.

It was also discovered during that raid that Mr. Buchanan, whose DNA was obtained by the State’s Attorney’s office, matched evidence collected from one of the rediscovered rape kits. He is one of 14 defendants to have charges brought against them in 20 cases based on evidence in the recovered rape kits. And to this day, Mr. Dinizulu adds, 15 years after the system placed justice for this Jane Doe high upon a shelf and let her stepfather continue to abuse her, she “still calls him dad.” n