We often receive questions from health care providers, law enforcement officers, and victim advocates about when they should conduct an exam or detailed interview with a victim of a sexual assault. In fact, such questions are relevant for the topic of our next webinar, *Effective Victim Interviewing, on* Wednesday, August 21st, 2013. Our guest speaker will be Russell Strand, Chief of the Behavioral Sciences Education and Training Division at the U.S. Military Police School.

Often these questions about timing center around the victim's need for sleep following the sexual assault and preliminary investigation. For example, a nurse sent us the following inquiry:

> *If a sexual assault victim comes to us immediately following an assault but is very sleepy and just wants to sleep, should we let them?! I just had a case like this where a victim came in (she had already made initial report to police) and by the time I got to the ER (30 minutes later) she was so tired she just wanted to go home and sleep. She actually became quite rude and belligerent with me, refused to sign the consent, and left without an exam. I keep wondering if we would have just found her a bed to sleep in or had police arranged transportation the following morning instead of right then, would she have had the exam?*
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> *This isn't the first time a situation like this has come up either. I have had victims fall asleep mid-sentence or victims that I've had to keep awake through the entire exam, which is not very conducive to getting a lot of – or very good – information or conducting a good exam.*

This is a terrific question, and a situation that many of us are familiar with. In fact, the question does not just pertain to the exams conducted by health care providers but also to the detailed, follow-up interviews conducted by law enforcement. To paraphrase, the question is this: *Should we let victims sleep before the medical forensic exam or detailed law enforcement interview?*

Back to Basics

In general, we believe that our communities could go a long way toward improving our response to sexual assault if we simply operated from the premise that we want victims to be involved in our response systems, so we should do whatever we reasonably can to help them do so. Sometimes we get so focused on our own policies and procedures that we forget to make accommodations that would encourage victims to participate, even if they entail some compromises that are less than ideal. For example, we often present victims with decisions that are framed as "all or nothing" and "now or never" – and we are then disappointed when they decline our services, because they feel overwhelmed. A better way is to reframe the choices we present victims with, so they

can take the process one step at a time, in a manner that is far more consistent with their traumatic victimization and coping response.

When the Victim Wants to Sleep

For example, when a health care provider conducts an exam with a victim who can barely stay awake, the reasoning for this is likely to be because the examiner wants to get the "best evidence." We know that biological evidence deteriorates over time – so, all things being equal – it seems logical that it would be better to do the exam sooner rather than later. But of course all things are NEVER equal, and we have historically both UNDERestimated the benefits of letting the victim sleep and OVERestimated the loss in evidence quality that would result from postponing the exam for a day or two.

Emerging research documents that biological evidence lasts far longer than we ever imagined, so we are not losing as much as we thought with the delay. Moreover, health care providers can triage some evidence collection. For example, if the patient permits, the nurse may collect some swabs right away (if evidence may be lost, as in the case of an oral assault where materials are only present for a short time) or collect a urine specimen (in the case of possible drug-facilitated sexual assault.), but then wait to gather a detailed patient history and conduct the rest of the exam at a later point.

We are also learning from the research that the victim's memory of events is likely to improve after a day or two, with the benefit of sleep and support, rather than deteriorate as we have long believed. As a result, there are many situations where a health care provider will actually get better evidence – both from the patient's body as well as the medical history – by postponing the exam and allowing the victim to sleep and simply digest the fact that they've been the victim of a crime. This could be accomplished either by providing a safe place to rest within the exam facility or letting the victim go home – depending on the specific circumstances and limits on what is reasonable for a particular facility.

Informed Consent

It is also worth reiterating that any aspect of patient care – including a medical forensic examination – can only be provided with the consent of the patient. If someone does not want to have an exam, or wants to do so later after having a chance to sleep, they should never be forced into it. As stated so eloquently by Kim Day, SAFEta Coordinator for the International Association of Forensic Nurses (IAFN):

> *We always need to remember that caring for patients is just that – caring for patients. We treat them as human beings who are seeking care, so we make our decisions based on that, and we allow them to make their decisions based on their own best interests (and sometimes sleep is what they need to begin to process what has happened to them). Part of the process of getting informed consent is letting patients know what can happen if they do consent to care and what can happen if they do not –*

> *which, in the case where they leave the facility, will include letting them know that there may be a potential loss of evidence that could be helpful in any judicial processes. Ultimately, knowledge is power, and empowering the patient with the knowledge of the process is really primary here – for them to make truly informed decisions.*

When the Victim is Intoxicated

Sometimes the reason victims are sleepy is because they are under the influence of drugs or alcohol. When victims are so impaired that they cannot consent to an exam, health care providers already know they have a responsibility to stabilize the patient before conducting the exam. So in that situation, they will keep the patient in their care until the patient has recovered enough to consent and participate in the exam. This situation isn't all that different. Health care providers must always keep in mind that this person is a patient first, so they should follow their ethical principles of patient-centered care and strive to "do no harm" to these individuals who have already been traumatized by sexual violence.

Returning to the situation described above, we believe the benefit of allowing the victim to sleep would have far outweighed the loss of evidence quality, even if the victim went home to sleep and came back for the exam the next day. Of course, some victims will go home to sleep and then never come back. So we need to make sure that we are not just sending them home but also making sure they are connected with advocacy resources and following up with personal contacts to ensure that they feel connected to an ongoing process and provided with the support they need to be involved. Yet victims will first need to consent to this follow-up contact and provide us with the best and safest way to reach them.

Interviews by Law Enforcement

So far, we have addressed the question about whether to postpone the exam in order to allow victims to rest and recover. The same general principles apply to the detailed law enforcement interview. However, there are also some additional factors to consider.

To provide a general statement, law enforcement will typically conduct a preliminary investigation as soon as possible following their initial contact about a sexual assault, and this will include a preliminary interview of the victim. However, this initial interview will be rather limited and can typically be done in the field where officers are responding. The officer will also typically have an opportunity to build rapport and gather information from the victim while driving together to the exam facility. Then the detailed, follow-up interview will be scheduled for later – often this is the next day, but it might be even better if it is a day or two after that. This allows victims time to rest, recover, and make arrangements so they can participate fully in the process and provide the best information possible during the detailed law enforcement interview.

Keep in mind that one reason victims are often so tired (and even frustrated) at the point of the exam is because we have asked too much of them already – and we have also failed to meet their most basic needs. In too many communities, victims are asked to undergo not only the preliminary interview by responding officers but also the detailed follow-up interview with investigators as well as a full history and exam by the health care provider. Victims may have even been required to face additional hurdles, for example, when they are asked to provide a detailed history of the assault to a triage nurse or doctor in the Emergency Department or when they are "handed off" from one police officer to another, simply because of a shift change. This must stop if we want victims to remain engaged in the process of an exam and investigation.

What the Initial Response TOO OFTEN Looks Like

During the initial response, we should make every effort to streamline the process, eliminate unnecessary professional contacts, and generally minimize the burden on victims. This will go a long way toward encouraging them to remain engaged and helping them to participate to the best of their ability. Too often the process looks something like this:

> Victims are questioned first by police dispatchers at the time of the initial call …
>
> … and then by patrol officers once they respond…
>
> … then in many cases, victims are asked many detailed questions about the assault by at least one triage nurse as well as a supervising physician before a Sexual Assault Forensic Examiner (SAFE) is called…
>
> … and detectives are conducting comprehensive interviews that include questions about perceived inconsistencies…
>
> …all before the exam has even started.

Is it any wonder then, that victims are often exhausted at this point in time – not only from the assault itself (and possibly the effects of drugs or alcohol) – but also by the system they are thrown into? Should we be surprised that they often become frustrated or even angry?

What the Initial Response SHOULD Look Like

To address these problems, best practice is if the initial response protocol looks something like this:

The first responding officer makes the initial contact with the victim and conducts a very basic preliminary interview which will be used to complete the crime report. This initial interview will be limited to meeting the four purposes that are needed at the time:

1. Establish that the elements of a sexual assault are met
2. Evaluate the need for a forensic medical examination
3. Identify the crime scene and any related evidence, witnesses, and the suspect(s)
4. Establish the identity of the suspect(s), and contact information if known

This responding officer (or a responding detective, depending on agency policy) will also coordinate the rest of the preliminary investigation, including witness checks, identification of crime scene evidence, location of the suspect, etc. Other responding officers may be involved in this process, but the first responding officer (or detective) who has made contact with the victim should remain the reporting officer for the case.

For more information on the process of a preliminary investigation, please see our OnLine Training Institute module entitled: *Preliminary Investigation: Guidelines for First Responders.*

Notifying the Exam Facility

At the point that a sexual assault has been identified and the victim consents to a medical forensic examination, the reporting officer should notify the Sexual Assault Forensic Examiner (SAFE) program as well as the victim advocacy organization. Often this notification is handled by communications personnel or a supervisor, but it is important to ensure that it is made as soon as possible. That way, the forensic examiner and victim advocate can respond promptly, avoiding unnecessary delays. The officer should then transport the victim to the exam facility and brief the forensic examiner about the information learned during the preliminary interview.

Medical Screening

In communities where the medical forensic exam is conducted in the Emergency Department (ED), rather than a freestanding SAFE facility, victims will typically need to be screened by a triage nurse as well as a physician before the exam can begin. This is done in order to meet the requirements of the Emergency Medical Treatment and Active Labor Act (EMTALA).[1] However, it is critical to remember that this screening is conducted for medical purposes, to determine whether the victim has any injuries or pain. It should therefore require only basic questions about the patient's current state and medical history, and not involve detailed questions about the assault. For example,

[1] The Emergency Medical Treatment and Active Labor Act (EMTALA) is a federal law established in 1986 that requires hospitals or other acute care facilities who offer emergency services to provide a medical screening examination to each person presenting to the emergency department. A medical screening exam is done to determine whether or not an emergency medical, not nursing, condition exists. EMTALA requires the assessment of a patient for the existence of an emergency medical condition before the patient can be transferred or released from the emergency department. An emergency medical condition is defined under federal law, 42CFR §489.24, and may be viewed in its entirety at a http://www.emtala.com. It is also available on the web page for the Code of Federal Regulations at http://www.gpoaccess.gov/cfr/retrieve.html. An understanding of what EMTALA is and what is meant by performing a medical screening exam is essential to the RN performing this task.

health care providers should not be asking a general question like: "What happened?" Victims won't know what information they are supposed to provide, and they will clearly feel like they have to "tell their story" to yet another person. Rather, health care providers who are conducting the medical screening (triage) should keep their questions narrow and focused on their purpose:

- *Why are you here?*
- *Do you have any injuries?*
- *Are you feeling any pain?*
- *What can I do for you?*

If victims begin "telling their story" as if they were being interviewed, the triage nurse or supervising physician can gently let them know that others will need more detailed information, but the goal at this point in the process is simply to determine whether they need emergency medical care. With a compassionate tone and good bedside manner, the nurse or doctor can make it clear that they are open to hearing whatever victims want to tell them – but also convey that they want victims to "save their strength" where they can and not have to repeat their account needlessly to a long line of professionals.

In other words, this medical screening is NOT an 'interview,' and should not be viewed as such, because this is not an appropriate role for health care providers. When these preliminary health care providers (e.g., triage nurses, supervising physician in the Emergency Department) ask detailed questions about the assault this adds to the burden on victims and contributes to the problems we are describing here.

Streamlining the Process

When the officer is transporting the victim to the ED, it is important to let the victim know what to expect ahead of time and take whatever steps are necessary to streamline the process. Several possibilities are described by Kim Day: *"Perhaps the nurse on duty can be freed up to greet the patient, or the on-call SAFE can be 'activated' prior to the patient's arrival, or at least the facility could be notified so they can prepare to greet the patient and expedite the processes that need to take place."* All of these alternatives are possible when the facility is notified as soon as possible by the officer.

For victims who present to the ED without first contacting law enforcement, it should be the hospital's responsibility to notify victim advocates and law enforcement as soon as possible (if the victim wants law enforcement involved or they have a legal requirement to report). Then the medical screening can be conducted while waiting for these professionals to respond. Again, every effort should be taken to streamline the process.

After the Exam

After the exam is completed, the forensic examiner should brief the reporting officer or detective regarding the findings. Victims can then be released (if they have their own transportation) or law enforcement can transport them to a place of their choosing.

Detailed Law Enforcement Interview

At that point, law enforcement will schedule a detailed, follow-up interview with the victim. This interview will be conducted by the investigator assigned to the case. In smaller departments, this may be the same person as the original reporting officer, but in larger departments the case will often be assigned to a detective for follow-up.

Typically this detailed, follow-up interview will take place one or two days after the initial interview and exam. As a general rule, it is not a best practice to conduct this detailed interview at the same time as the exam. However, there will be exceptions where the victim WANTS to do the interview then. There will also be times when there is a substantive reason for conducting the detailed interview right away. For example, law enforcement may need information from the victim immediately to identify the crime scene(s), if evidence might be destroyed or if the suspect poses an urgent threat to the victim or the public and therefore needs to be identified and arrested.

Notifying Victim Advocates

Of course, at each point in the process – beyond the emergency first response – victims should be offered advocacy services. They should also be provided the opportunity to have an advocate or other support person present during the exam and follow-up law enforcement interview, if they want one.

For more information on advocacy services, and their intersection with the criminal justice process, please see our OnLine Training Institute modules entitled:

- *Effective Victim Advocacy within the Criminal Justice System*
- *Breaking Barriers: The Role of Community-Based and System-Based Victim Advocates*

More Information on Victim Interviews

For more detailed information on when and how to conduct a successful victim interview, please see our OnLine Training Institute module entitled, *Interviewing the Victim: Techniques Based on the Realistic Dynamics of Sexual Assault.*

We also invite you to join us for our next webinar, which is on this topic of *Effective Victim Interviewing*, on Wednesday, August 21, 2013. Our guest speaker will be Russell Strand, Chief of the Behavioral Sciences Education and Training Division at the U.S. Military Police School. As many of you know, Russ was the recipient of our 2012

Visionary Award, and he has graciously presented at our conferences for many years. His sessions are always extremely well received. We know that you will want to hear what he has to say during this unique training opportunity.

Mr. Strand's presentation will offer strategies you can use to successfully interview victims of violence, using the Forensic Experiential Trauma Interview (FETI).

Please note that this webinar is not supported with grant funding, so a registration fee is required. We hope you will join us. For more information or to register for the webinar, please go to: http://www.evawintl.org/WebinarDetail.aspx?webinarid=1.

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