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Understanding the Non-Stranger Rapist

BY
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The following hypothetical scenario is used by the author to provide concrete examples of several points made about offenders throughout the article. Prosecutors should remember that while the examples given here are sound, the facts of each case are individual and unique, so prosecutors should consult with offender experts whenever necessary. All names have been changed, and any resemblance to real or imaginary figures is unintended.

SCENARIO

Dr. John Smith, a wealthy, attractive physician, is charged with the rape of Jane Roe, who works as a secretary for an office-supply company. The two met at a speed-dating event at a bar. Smith approached Roe at the bar, where she had already ordered a drink. He ordered himself a drink and purchased several more drinks for Roe over the course of the night (over her protestations even after she told him that she felt drunk). Smith and Roe danced throughout the night and shared several kisses on the dance floor.

Roe refused Smith's offers of a ride home, but after she tried unsuccessfully to flag down a cab, she finally accepted. He asked if he could come in to use the bathroom. Roe allowed this, but only had one bathroom in her house. She vomited in the kitchen sink while Smith was in the bathroom. Smith came out, saw that Roe had vomited, and told her to go clean up in the bathroom and take some Tums. When Roe returned, Smith asked if he could sleep on the couch, and Roe reluctantly agreed. They kissed for a few minutes, and then Roe went into her bedroom alone to go to sleep.

Roe woke up during the night to find Smith having sex with her. She tried to push him off, and asked what he was doing. Smith told Roe to just relax, because he was almost done. Roe kept struggling, then stopped moving and started to cry when Smith grabbed her neck and squeezed tightly to stop her from resisting. After raping her, Smith asked Roe "What's your problem?" Roe told him to leave, which he did after dressing.

Roe called in sick to work the next day, and told a friend what had happened. The friend convinced Roe to go to the hospital. Roe blamed herself for the assault, and therefore told the hospital nurse that she did not want to report. Mandatory reporting by the nurse resulted in law enforcement involvement.² Law enforcement interviewed Roe briefly at the hospital; Roe explained that she didn't report because she didn't think she would be believed.

Smith, while giving a voluntary statement to law enforcement, said that Roe was interested in him because he was an anesthesiologist and wealthy. Roe asked him for a ride home, invited him in, and he agreed. Roe seduced him, and invited him to sleep over. Smith stated that all their sexual activity was consensual, and that Roe was lying about the rape because she was crazy. Smith said he based that conclusion on the bottle of Ativan³ he found in Roe's bathroom medicine cabinet while she was vomiting in the kitchen. Smith also said Roe probably felt guilty about having a one-night stand. Smith insisted that the bartender would say that Roe had been throwing herself at him all night. Law enforcement interviewed the bartender, who said that Smith is a frequent customer and a very good tipper. The bartender also stated that women were always throwing themselves at Smith, and he was always buying women drinks.

continued ➤

INTRODUCTION

The non-stranger rapist commits sexual crimes in the context of an interpersonal relationship. He⁴ is the husband who rapes his wife; the doctor who sexually assaults a patient during an exam, taking pictures of her naked; or the best friend who comforts his friend's girlfriend after a fight, then uses the opportunity to rape her. In a non-stranger sexual assault, it is not the crime itself, but the relationship between the victim and the offender, that makes the offense so hard to identify, define, and prosecute. In order to understand the non-stranger rapist, prosecutors must understand the offender's motivation to commit his crimes; the role the relationship between the victim and offender plays in a sexual assault; and the offender's skills as a criminal to manipulate his victim and the jury. Only when the prosecutor truly understands the nature of the offense and the offender can the crime successfully be prosecuted.

OFFENDER MOTIVATION: WHY DID HE DO IT?

In non-stranger sexual assaults, jurors often struggle to understand the offender's motivation. The clearest answer to the question, "Why did he do it?" is that sexual assault fulfills needs for the offender. The offender's needs, which motivate him to commit sexual assault, can be divided into two main categories: sexual deviance and character trait motivation.

Sexual deviance motivates assault through a deviant sexual arousal pattern. Sexual deviance occurs when an offender sexualizes typically non-sexual objects, dynamics, emotions, or contexts. An offender may be aroused by physical and/or psychological vulnerabilities in his victims, whether they result from intoxication or physical or mental

disabilities. While psychologists do not know how sexual deviance develops, they do know that offenders reinforce deviant sources of arousal through masturbation, fantasy, and other behaviors.⁵

In the hypothetical case, the issues of sexual deviance are exhibited in the doctor's sexual choices. Specifically, it becomes clear that Dr. Smith can achieve and maintain sexual interest in and arousal for a woman who gets sick, smells like vomit, resists, and begins to cry. He is able to stay aroused when he covers her mouth and strangles her. All of these elements are indicative of a *deviation* from the norms of sexual behavior, expectations, and arousal. The facts suggest that Dr. Smith engaged in purposeful behavior to ensure that he would have a non-consenting partner through the use of alcohol, drugs, and coercion. This purposeful behavior is in stark contrast to Dr. Smith's likely option of engaging in a consensual sexual relationship or achieving sexual release in another manner. The facts suggest that Dr. Smith is interested in rape, not consensual sex. There are no coincidences in the choices made by sexual offenders.

Secondly, an offender may possess certain character traits which motivate his offenses. When an offender has a criminal, narcissistic, or otherwise interpersonally and socially-compromised personality, he can be motivated to offend for a variety of reasons. He may lack the internal barriers that prevent offending, like guilt, remorse, empathy, or compassion. He may maintain a belief system which devalues the rights of others and overvalues his rights. He may be indifferent to, or aroused by, the pain, suffering, injury, or humiliation of others. The offender also may feel that the rules of society do not apply to him.

The fact pattern suggests that Dr. Smith is socially and professionally successful. He uses his knowledge as an anesthesiologist to incapacitate Ms. Roe by preying on her use of alcohol and Ativan. He chooses to contrast his status as a doctor with Ms. Roe's employment as a secretary when speaking to law enforcement in order to discredit Ms. Roe. As described above, there are no coincidences: Dr. Smith's defense tactics and explanations reveal his character. He selected the particular rationales to explain his actions that are consistent with his character. Dr. Smith wants to project that he is irresistible because of his personal and professional status. Based on his psychological profile,⁶ Dr. Smith would not choose to victimize someone he perceives as an "equal," as another doctor or wealthy woman could not be labeled by others with the same "agenda" as Ms. Roe. These elements and behaviors are a direct reflection of his character.

It is important to recognize that both of these pathways to offending, i.e., sexual deviance and character trait motivation, can coexist in the same offender. For example, a criminal, antisocial person also may be sexually aroused by a victim's lack of, or inability to, consent. When both pathways exist, the offender is even more dangerous. Determining the pathway is not as critical to prosecution as determining the offender's current behavior pattern. It may necessitate the use of an expert witness for pre-trial consultation.

Prosecutors who understand that offender behavior can be explained in terms of the offender's fulfillment of his needs should, in turn, explain this concept to the jury. Sometimes offenders will claim that the offense was a consequence of a circumstance or accident. For instance, an offender will claim that he "accidentally" went too far with a victim,

misunderstanding her resistance or that she said “no.” He might try to portray a rape as a consensual act that occurred when his judgment was impaired by alcohol. In the face of such denials, prosecutors can help expose a defendant’s true intent by revealing the choices the offender made to fulfill his needs. Prosecutors can construct cross-examination questions that expose the offender’s behavior as purposeful and need-driven. For example, the prosecutor can counter the offender’s claims of accident by exposing all the signs of planning in his behavior. As a result, jurors may more easily accept that the defendant has committed acts that they find abhorrent and antisocial, rather than engage in victim-blaming.⁷

THE OFFENDER’S RELATIONSHIP WITH THE VICTIM: WHY DID HE PICK THIS VICTIM?

Non-stranger rapists generally select victims whom they perceive as particularly vulnerable. Non-stranger rapists often choose victims for their ability to connect, trust, and be prosocial.⁸ In addition, non-stranger rapists also may choose victims who appear “nice,” accepting, or in need of companionship. Some victims may also simply be dependent on the offender, respond to the offender’s authority, or already love the offender in some capacity.

The qualities that the offender looks for in a prospective victim are the same qualities that may prevent her from coming forward: a “nice,” trusting, accepting victim will not know how to react to being sexually assaulted by someone she once trusted. Offenders understand a basic principle of victimization: the more the victim is invested in her relationship with the offender, the less likely she is to disclose a

rape.⁹ Often, victims of non-stranger rape are confused or unclear about whether they are truly victims.¹⁰ They tend to blame themselves, focus on the “likeable” aspects of the offender, give the offender the benefit of the doubt, or fear the offender more because of his access to them. Because the victim has been involved with the offender, she may feel ashamed and blame herself for somehow “allowing” her assault. Her thoughts will range from “I never should have gone out with him,” to complex feelings related to any love, sympathy, dependency, or concern she has for her offender.

Revisiting the fact pattern, it is clear Dr. Smith chose Ms. Roe because he perceived her as vulnerable. Dr. Smith pictures Ms. Roe’s job as requiring her to attend to authority figures. Roe drank alone in a bar after a speed-dating event. Dr. Smith knows this portrayal will contrast unfavorably—in the courtroom or at the police station—with his image, a physician of status who is unlikely to be perceived as “needing” to rape anyone. As Dr. Smith’s perceived desirability increases, Ms. Roe’s lack of credibility increases. Ms. Roe is vulnerable to societal biases that label women as “gold-diggers” who will pursue a wealthy man, as well as biases against women who become drunk. Dr. Smith also tests Ms. Roe’s compliance. He buys her drinks that she does not want to see if she will succumb to his pressure. This is a specific act to test and then select Ms. Roe as his victim.

It is not uncommon for the disclosure of a non-stranger rape to be forced or strongly influenced by an injury, a friend, or a secondary need, such as fear for children, fear of pregnancy, or fear for others. For example, a victim might disclose the offense to a friend for the purpose of clarifying the offense for herself, but then her friend might make an official

report out of concern for the victim. The disclosure may also be hindered by the victim’s feelings about the offender and the relationship. The victim may look back on her relationship with the offender and convince herself that she deserved to be assaulted. She may feel confused, betrayed, or distrustful of her own judgment about others. She may feel responsible for any negative consequences to the offender—i.e., that he is going to jail because she told, not because he raped her. The victim may be convinced that she “led him on,” or that any prior consensual activity with the offender means that she could not have been assaulted *this* time. The offender selects his victim hoping that all these possibilities will come true, and that the victim will not report at all.

In the fact scenario, Ms. Roe’s ambivalence about reporting is typical victim behavior. Ms. Roe tells the nurse that she does not want to report. She fears she will not be believed, especially when compared to Dr. Smith, whom she perceives, perhaps accurately, as more credible in law enforcement’s eyes. Further, she may struggle with shame and guilt about her sexuality. Remember, Ms. Roe was pressured to tell and might never have reported the rape, if not for her friend’s persuasion and the nurse’s mandatory report. These thoughts and their effects on Ms. Roe’s credibility benefit Dr. Smith as an offender, and he counts on her behavior in his planning.

OFFENDER SKILLS: HOW DOES HE MANIPULATE THE AUDIENCE?

The “audience” in a sexual assault case includes witnesses to the offender-victim relationship, the police, the prosecutor, the judge, the jury, and anyone else who is a witness to any part of the crime, its build-up,

or its aftermath. The non-stranger rapist may talk to his friends about how the victim has been “coming on to him.” He may treat all of the victim’s friends and family so politely that they never would believe he “could do a thing like that.” He might get the victim really drunk at a party, and then claim that she was so drunk she cannot remember the truth. He may hold himself out as a person of status and authority who does not “need” to rape anyone, and portray the accuser as crazy, vindictive, or just plain wrong.

Generally, the non-stranger rapist has social skills and understands prosocial behavior; therefore, his behavior during the investigation or interview may appear to be very truthful and cooperative. He will attempt to convince the police that he has been wrongly accused. He may appear for an interview, answer questions consistently, and tell a story so close to the truth that it seems improbable that he would be lying. He may ask, “Why would I need to rape her?” thereby highlighting his own sexual success, her perceived interest and willingness, the audience’s biases, or the general denial that he—a good person—would ever commit a sexual assault. He will have prepared his audience to answer, “You wouldn’t need to rape anyone.” If allowed, the offender will groom the prosecutor, the judge, and the jury in the same way.

In the fact pattern, Dr. Smith identifies a bartender who will “confirm” that women want him, that he throws around money, and that he would never “need” to rape anyone. Witnesses like the bartender vocalize a defendant’s defense for him: “When he can have his choice of women, why would he choose rape?” A good prosecutor, however, will answer this question by highlighting the defendant’s purposeful actions that demonstrate his need for coercive

rather than consensual sex. Based on his psychological profile, Dr. Smith is not excited by women who are his equals, and consensual sex does not fulfill his needs.

Another powerful tool defendants use to groom or manipulate the audience is to be nice. A “nice” offender does not fit society’s image of a rapist. Society wants all sexual offenders to appear as they do on television—scruffy, dirty, and gaunt. Society also wants them to be strangers to the victim. The fact is: most are not. Most sexual offenders are people already known to the victim.¹¹ Most non-stranger rapists use their social skills to gain control of and cooperation from the victim with little effort. Offenders know how to exhibit the traits that most people use to determine when someone is safe to be around. Niceness is a powerful weapon. When someone is nice, it is difficult to confront him, set limits on him, or mistrust him. When the victim mistrusts the offender, she feels bad about herself for being suspicious. “Nice” comes through to juries and judges, as well as to the victim. Offenders often produce character witnesses to testify that they are good citizens/fathers/workers/church members. The defendant is counting on society to perpetuate the belief that niceness cannot co-exist with violence, evil, or deviance; consequently, the “nice” guy must not be guilty of the alleged offenses.

Prosecutors can confront a “nice” offender by strategically deconstructing the image of the offender and demonstrating that each act of niceness benefited the offender. When an offender buys a victim a drink, he is impairing her. When he compliments the victim and offers to help her, he is garnering trust. Prosecutors must show that all the prosocial, “nice” behavior benefits the offender each time. A prosecutor also

can point out all the consequences that a victim would face if she were not nice in return, based upon the facts of the prosecutor’s case.

In the scenario, Dr. Smith clearly exhibits a pattern of contrasting his “good” behavior against the victim’s “bad” behavior. Dr. Smith manipulates the bartender by being “nice” and tipping well, so that the bartender vouches for his trustworthy character. Dr. Smith calls Ms. Roe crazy and suggests her “guilt” about a “one night stand.” Not only does this degrade the victim, but it reveals that Dr. Smith specifically identified and is willing to use Ms. Roe’s use of a legitimate prescription medication (Ativan) against her. Dr. Smith pushes Ms. Roe to drink alcohol, then plays upon the fact she was on medication. Dr. Smith is so sure that the focus will be on Ms. Roe’s behavior rather than on *his* behavior that he claims he had consensual sex with her after she threw up (not something a “nice” guy does). Ms. Roe’s belief in Dr. Smith’s “niceness” is a critical part of her victimization. She is lulled into trusting him because he is “nice,” and therefore accepts a ride from him, lets him into her apartment, and allows him to sleep on the couch.

If the offender revealed his true character, he would not succeed in perpetrating his assault of the victim. Being nice is his best camouflage. In order to help camouflage his offenses, the non-stranger rapist often relies on societal biases and stereotypes about “rapists.” As previously discussed, he will try to look and act differently than the stereotypical perverted “rapist.” He will point out that there was no “real” force, like a weapon or overt physical violence. When perpetrating the assault, the offender’s acts will be subtle and hidden from view by an outsider, thereby decreasing the need for him to use physical force. For example, the offender may cite a

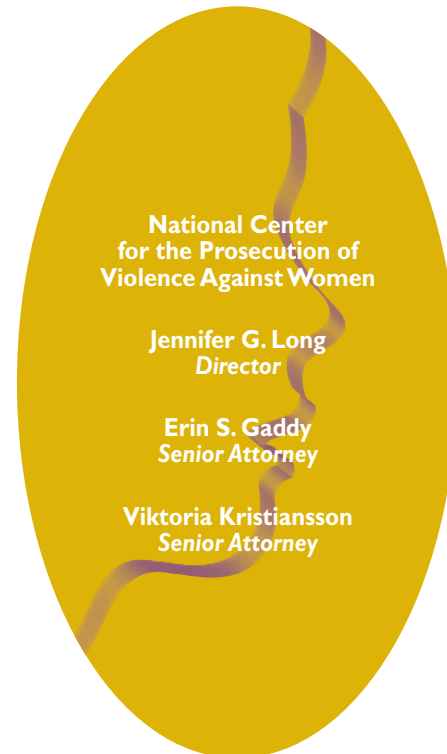
custody battle, envy, sexual tension, or infidelity in describing the victim to exploit the myth that “women cry rape” to retaliate against men.¹² The offender will say that he did not know the victim really wanted to stop or did not know that she had passed out. He will say he didn’t need to rape; what happened was beyond his control. The offender will make these statements to reinforce the public’s (incorrect) theory that rape is not need-driven.

RECOMMENDATIONS AND CONCLUSIONS

On direct examination, the prosecutor should humanize the victim and provide a context for her behavior. The most important goal is to show that the “weaknesses” of the case constitute normal human behavior on the part of the victim. Specifically, it was “normal” for Ms. Roe to drink alcohol, go to a speed dating event, and to trust Dr. Smith. It was also normal for her to feel ashamed and be reluctant to report after the sexual assault. The direct examination of Ms. Roe should communicate this to the judge and jury by framing the “normal” behaviors in a sympathetic manner.

The prosecutor also should prepare the victim for cross-examination through a good direct. Her actions and justifications may be clear to the prosecutor, but should be explained directly to the jury. For example, give the victim the opportunity to explain: “There is no way I would have screamed—I was afraid he’d choke me to death!” This technique places the focus back where it belongs: on the offender’s behavior.

In closing argument, it is highly effective to clearly describe the sexual assault as a process, starting as close to the beginning of the offender’s preparatory process as possible. Prosecutors should demonstrate that preparation for the rape begins long before penetration



occurs. Prosecutors must ensure that their closing arguments establish the purposefulness of the offender’s conduct at the time of the rape as well as in the events leading up to it. The prosecutor should use each and every piece of evidence and act of the offender to contrast his “nice” behavior with what is really good and right. For example, it was “nice” of Dr. Smith to drive Ms. Roe home when she drank too much,

but it would have been good and right to lead her to the couch, make sure she was safe and well, and leave without sexually assaulting her. The offender’s behavior is criminal, and the prosecutor should track that behavior from start to finish.

All sexual assault is need-driven, intentional behavior. Prosecutors must attempt to identify the needs of the offender for the jury, or at least explain that the offender has a need to offend. The prosecutor, therefore, should try to determine why and how the offender selected his victim so that the prosecutor may then explain that process to the jury. A rapist makes a relationship a dangerous place; the existence of the relationship confuses the victim, provides cover for the perpetrator, and complicates the prosecution. The prosecutor should look for ways in which the offender is able to use the context of the relationship to hide his crime from and avoid judgment by his audience—the police, prosecution, judge and jury. Offenders hide behind the context of their relationships with their victims. They mask themselves as “nice guys.” They play upon society’s biases and stereotypes. They use prosocial skills, social biases, and stereotypes that surround rape to make sexual offenses covert. Prosecutors can successfully expose rapists by communicating all of these ideas to the jury and portraying the so-called “nice” offender as the rapist that he is. ■



Editor’s Note: This article was written to assist prosecutors who may not typically handle non-stranger rapes with the issues of psychological motivation and strategy on the part of the rapist. This article is not primarily intended to provide courtroom tips; please contact the National Center for the Prosecution of Violence Against Women for resources relating to trial practice.

FOOTNOTES

- ¹ Dr.Valliere is a psychologist in private practice in Fogelsville and Allentown, Pennsylvania. Dr.Valliere's practice consists of two divisions: the first is an outpatient treatment facility for victimization and other mental health issues, serving children, adolescents, and adults; and the second is an outpatient violent offender program, treating perpetrators of sexual and intimate abuse.
- ² For information regarding states with mandatory reporting laws, please see http://www.ndaa.org/apri/programs/vawa/state_rape_reportings_requirements.html.
- ³ Ativan is used to treat anxiety disorders and "is in a group of drugs called benzodiazepines. Ativan affects chemicals in the brain that may become unbalanced and cause anxiety." Ativan "can increase the effects of alcohol. Ativan can cause side effects that may impair ... thinking or reactions." See <http://www.drugs.com/ativan.html>.
- ⁴ Between 1994 and 2005, the average annual percentage of rape and sexual assault of offenders who were male was 96.4% (Bureau of Justice Statistics, 2006).
- ⁵ See William L. Marshall, *Assessment, Treatment, and Theorizing About Sex Offenders: Developments During the Past Twenty Years and Future Directions*, 23(1) CRIMINAL JUSTICE AND BEHAVIOR, 162-99 (1996).
- ⁶ Please note that profile evidence is not generally admissible in a criminal prosecution. However, prosecutors can benefit from having an accurate picture of the offender, whether it be for strategy, victim preparation, or preparing to cross-examine the defendant.
- ⁷ Prosecutors also may find that victims themselves engage in victim-blaming. Such victims may benefit from consultation with an advocate or counselor who can help victims identify and stop victim-blaming attitudes.
- ⁸ Prosocial behavior is behavior that appears to be in the service of helping, giving, or being socially beneficial.
- ⁹ The Commonwealth Fund Survey of the Health of Adolescent Girls (1998) found that 77% of completed and attempted rapes are not reported when the offender is a paramour or ex-paramour and 82% are not reported if the offender is a friend. The trends are generally reflected in the literature. In addition, a report for the Bureau of Justice Statistics found that rape or sexual assault committed by a non-stranger was reported to police at a much lower rate (27%) than the reporting of all other crimes committed by non-strangers (41%). Timothy C. Hart and Callie Rennison, Ph.D., *Reporting Crime to the Police, 1992-2000* (2003).
- ¹⁰ "Among women who were categorized...as victims of a completed rape based on the characteristics of the incidents, almost half did not consider themselves to be the victims of rape." Michael Rand and Callie Rennison, *How Much Violence Against Women Is There?* (2004).
- ¹¹ According to the 2005 National Crime Victimization Survey by the U.S. Bureau of Justice Statistics, more than 70% of women who reported being raped were raped by someone known to the victim.
- ¹² See, e.g., Michelle J. Anderson, *The Legacy of the Prompt Complaint Requirement, Corroboration Requirement, and Cautionary Instructions on Campus Sexual Assault*, 84 B.U.L. Rev. 945 (2004).

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