

NYPD Sex Crime Investigation Divisions Lack Training, Staff, and Clear Protocols to Adequately Respond to Sexual Assault Reports

by Roslyn Myers, Ph.D., J.D.*

As she has done previously, Roslyn Myers delivers a scathing critique of the ongoing inadequacies of the NYPD Special Victims division (SVD), which investigates sexual crimes. These units have historically been riddled with shortcomings in critical areas such as staffing, training, and investigative procedures, among others. The author notes that, although there have been some positive changes over the years, the SVD continues to be plagued with shortfalls that hamper their ability to prosecute sex crime, protect victims, and achieve justice—the very activities that comprise the core of their mission.

As far back as 2010, the New York Police Department’s sex crime units, known collectively as the Special Victims Division (SVD), have been subjected to dangerous levels of neglect. Despite “repeated warnings” from NYPD commissioners, the SVD has been understaffed, under-resourced, insufficiently trained, unable to access modern technology to advance investigations, housed in unsanitary offices, and besieged by burn-out and incompetence (*see, e.g., Eligon, 2010*). Even before a highly critical report was issued in December 2010 by the NYPD’s own Sex Crimes Working Group (IG Report, 2018, Appendix A), which highlighted the Division’s dire circumstances, there were concerns up and down the chain of command that the SVD was on the verge of collapse.

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The early audits of the SVD focused on understaffing as the primary driver of the Division's problems, and the chronic staffing shortages were documented both in internal memoranda and in public statements made by NYPD leadership. The SCWG Final Report outlined specific recommendations to stabilize SVD detectives' caseloads even as the number of crimes assigned to the SVD more than doubled while the SVD squad itself was shrinking due to attrition. However, as reported in a subsequent review by the Department of Investigation (DOI), the NYPD "never implemented [the SCWG's] staffing recommendations. Moreover, [those] recommendations were based on flawed assumptions, and consequently were seriously below nationally recognized standards."

Later, a 2018 report issued by the Inspector General for the NYPD after a year-long investigation, entitled *An Investigation of NYPD's Special Victims Division—Adult Sex Crimes* (March 27, 2018) (IG Report), was more damning and more expansive in its criticism of the SVD:

NYPD's formal training for SVD is also subpar. For example, a new SVD recruit receives five days of formal specialized training compared to six to eight weeks for a motorcycle patrol officer.

This chronic neglect of SVD staffing and resources continues to have serious negative effects on the prosecution of sex crimes in New York City. In interviews, multiple prosecutors described improper handling of cases by overloaded or inexperienced investigators that have hindered prosecutions. Further, internal NYPD documents obtained by DOI now confirm the existence of a longstanding NYPD practice that certain cases involving "acquaintance" and "domestic" rape not be "enhanced" (investigated post-arrest) by SVD, but kept at local precinct detective squads instead. The failure to treat acquaintance and domestic rape as crimes on par with stranger rape is unacceptable in modern law enforcement (IG Report, 2018, p. 2).

The IG Report also detailed the incorrect assumptions underpinning the NYPD division of labor, which left the SVD with too few detectives to handle the volume of sex crime reports. As a result of the "flawed" staffing restrictions, felony sex crime investigators were overextended, suspects for whom probable cause existed were not apprehended, and misdemeanor sex crimes were not pursued at all. Instead, officials instructed the SVD to focus on high-profile cases and stranger rapes.

NOTABLE LACK OF GUIDANCE IN SEXUAL ASSAULT RESPONSES

After that report was issued, problems at the SVD shifted somewhat, but even today the dereliction continues (*see* Myers, 2022). As recently as 2021, when the most recent independent audit was conducted, the SVD

showed “a notable lack of detailed guidance via policy and guides, regarding the response, direction, and roles and responsibilities of NYPD in sexual assault response...across the organization, including a lack of clear protocols for patrol responding to sex crimes scenes,” according to an evaluation issued in 2021 by the Research Triangle Institute International (RTI Report, 2021, sec. 1).

Also, the audit found that the SVD detectives failed to effectively interview or follow through with arrests in the vast majority of sex crime cases reported to the department.

RTI conducted its evaluation of the SVD offices in each of New York City’s five boroughs between April 2021 and September 2021 as an “independent and comprehensive review of the agency’s response and investigation of adult sexual assault cases” by a team of “multidisciplinary experts with expert knowledge and experience in law enforcement, including sexual assault investigations, sexual assault nurse examinations, forensic science, prosecution, advocacy, and research” (RTI Report, 2021, sec. 1). The assessment examined NYPD policies pertaining to sexual assault response and investigation, in-service training, and academy training curriculum. RTI also conducted SVD personnel and stakeholder interviews and undertook an analysis of investigative case files for reports initiated between 2018 to 2020 for which the facts met the Federal Bureau of Investigation’s *Uniform Crime Report* (2014) definition of rape, which is “penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim” (RTI Report, 2021, sec. 1.3).

HIT-OR-MISS APPROACH TO INVESTIGATIONS

The RTI report criticized the efficacy of NYPD SVD responses to sex crimes, noting that the detectives did not organize each investigation according to the facts of the report, but seemed to use a hit-or-miss approach in many instances. The Report stated:

Generally, investigative strategies and approaches were not consistently tailored to the needs of the case or the victim. For example, some investigative approaches were implemented across most cases, even if the approach may not have been the most strategic or efficient next step (e.g., controlled call, victim photograph). Other investigative practices were found to be underutilized, like dispatch of crime scene response or in-person suspect interviews. Overall, the Assessment Team noted that SVD investigators may benefit from written direction surrounding the timing and general progression of investigative steps, including case closure (RTI Report, 2021, sec. 1).

The RTI auditors highlighted the dearth of sex crime training for all NYPD officers and specifically a lack of SVD-specific training content that

could support the Division's implementation of appropriate investigatory protocols.

In the 150 cases that were randomly audited, the Report found that SVD officers failed to ask important detective questions, to properly record the interviews, and to include appropriate documentation in the files. Although the SVD investigators interviewed nearly all sex crime victims (93%) and, often as a result of that process, identified suspects in a large majority of cases (82%), the detectives located and interviewed only 28% of the identified suspects and closed only 6% of the cases with an arrest (RTI Report, 2021, table 4.1).

VICTIM-CENTERED, TRAUMA-INFORMED RESPONSE METHODS NEEDED

The Report recommended that NYPD policies “address the complexities of sexual assault cases” by, at minimum, developing effective victim-centered, trauma-informed response methods consistent with the New York Sexual Assault Victim Bill of Rights, issued under NY Pub. Health L. § 2805-i(6) (2019). Currently, SVD officers are instructed to provide a written copy of the Victim Bill of Rights to victims when a report is made. More importantly, officers themselves should avail themselves of that information to better understand what the State guarantees to victims of sex crimes and to be able to explain the rights to victims who ask.

In their meetings with law enforcement, the Sexual Assault Victim Bill of Rights guarantees victims the following rights:

- To be accompanied by an advocate from the local rape crisis program during interviews with police or prosecutors;
- To have evidence provided by the victim tested within 100 days;
- To contact the police regarding the outcome of an attempted DNA match;
- To have evidence provided by the victim stored for 20 years or until the victim decides to release it, and to be notified if the evidence is moved before the storage period ends;
- To contact the police or prosecutor for information on the criminal investigation or legal proceedings related to the case; and
- To choose to not make a report to the police (NY Dep't of Health, Sexual Violence Prevention Program, Pub. 1934 (2019), *available at* www.Health.NY.gov/prevention/sexual_violence/).

Additionally, the Report recommended that the SVD integrate victim advocates into its routine protocols:

Notably, there is no mention of or reference to victim advocacy across all the NYPD policies and guides reviewed. Ensuring the critical needs

of victims (safety, support, information, access, continuity, voice, justice) are addressed supports any investigative or future criminal justice process...We recommend the creation of a written policy related to the incorporation of victim advocacy, including individual advocate roles, responsibilities, appropriate communication, and specific direction for NYPD personnel when providing sexual assault victims information related to their rights (RTI Report, 2021, sec. 3).

The Report also highlighted the problems that arise during a victim's first contact with police. If that first interaction is with NYPD patrol officers (not SVD detectives), the level of skill can vary. The Report quoted one officer who admitted that an inexperienced officer who encounters a sexual assault victim "[has] to learn somehow and many times it is from mistakes we make" when interacting with a traumatized victim. In a few instances, officers mistakenly used "interviewing strategies that overtly blamed or questioned a victim's actions or the veracity of the report" (RTI Report, 2021, sec. 5.2.3). Although the "expectations for a patrol interview [are] notably different from a comprehensive detective interview," the underlying problem is a misunderstanding of the long-term effects of victimization and secondary victimization by the criminal justice system. The RTI Assessment Team observed:

[P]atrol officers often did not consider the immediate or long-term impacts of their interactions with reporting victims...[I]t is possible that an untrained, inexperienced officer could be responsible for making initial victim contact [which] has the potential for a severe and adverse impact, both on the wellbeing of the survivor and the likelihood of their continued involvement with law enforcement on the case.

Overall, officers appeared to have little understanding of how trauma can impact victims, and several interviewed had not heard of trauma-informed response, nor had they received any training in this area. When attempting to describe their qualifications for working sexual assault cases, one officer interviewed described how they are already trained to handle crime scenes and protect evidence. In doing so, the officer equated the victim with crime scene evidence, demonstrating the lack of a victim-centered, trauma-informed approach (RTI Report, 2021, sec. 5.2.2).

The Report noted that "officers lacked direction" when interacting with victims, leaving them to "wing it" when dealing with victims:

While containing robust information on expected notifications of responding personnel within the chain of command, guides lacked information on specific response direction and expectations related to personnel interacting with victims and the impact of these interactions...

The Assessment Team found that responding patrol officers had minimal knowledge of the NYPD sexual assault response policy, which is also void of any direction for patrol [officers, who coordinate with the SVD], that would be helpful in ensuring a victim-centered response...Overall, victim interviews were documented in a “just the facts” manner: who, what, when, and where (RTI Report, 2021, sec. 5.2.3).

LACK OF TRAINING AND FAILURE OF PROTOCOLS

The ineffectiveness of the NYPD in responding to reports of sex crimes arises in part from a lack of training, a failure of protocols, and the failure to prioritize improvements that would counter these problems. The Report noted that patrol officers in particular were lukewarm about additional training targeted to improve patrol interactions with sexual assault victims: “There was mixed interest [in] additional training; although some officers did express a desire to have additional direction and information that would be of assistance in working [sex crime] calls, others conveyed that they did not feel this was a priority or even necessary” (RTI Report, 2021, sec. 5.2.2).

Academy Training Does Not Provide Specialized Instruction for Sex Crimes

It is possible that patrol officers have come to believe that their basic education is sufficient. The NYPD Police Academy utilizes one six-month training program divided into three trimesters, which is attended by all recruits. Police Academy recruits do receive sex-crime-related material in their primary textbook, *Police Student’s Guide*. But many sections of the Guide merge the instructions for sex crimes responses with other types of crimes. That may be why, as the auditors observed, many officers were only able to describe generic protocols (e.g., secure the scene when necessary, assess for the need for SVD response, call for SVD response) when responding to sexual assault reports, but not specialized actions demanded by that type of crime, and why the additional actions necessary to move the investigation forward were not uniformly carried out. “[S]ome patrol officers only covered the basics in terms of contacting the victim and completing notifications to SVD investigators. In other cases, patrol officers made limited efforts to locate crime scenes or establish contact with witnesses and suspects who might have helpful information. Furthermore, the Report observed that “[o]n-the-job training appears to be the standard in these areas and others, but the NYPD would benefit from additional training and direction targeted specifically at patrol interactions with sexual assault victims” (RTI Report, 2021, sec. 5.2.2).

In several parts of the Report, the auditors noted that sex crimes and sexual assault victims are inherently different from other crimes and crime victims, and thus require distinct training and guidelines. Even where the

Academy modules were tailored to the unique demands of this type of crime, the Report criticized the presentation because “the training modules associated with sexual assault response are not grouped together in any meaningful order; [t]he result is that academy recruits are not provided with a set of trainings that are linked together to provide a clear picture of the unique aspects of sexual assault” (RTI Report, 2021, sec. 3.3).

NYPD Training Minimizes Importance of Sex Crimes

Not only does this presentation leave cadets with a poor understanding of sex crimes and the unique dynamics among the parties involved, it sends a message to new officers that the NYPD does not prioritize these crimes or the victims. Thus, in providing weak instruction on the special characteristics of sex crime cases, the primary text for cadets accurately reflects the Department’s general attitude about the importance of these cases.

Recommended Curriculum

The Report recommended that the NYPD develop sex crime unit training that includes the following modules:

- Information on when and how to incorporate victim advocacy;
- Parameters for contact, communication, and interviews with victims, witnesses, and suspects;
- Coordination of medical care to ensure inclusion of the SAFE (Sexual Assault Forensic Exam, an invasive detailed procedure that can take four hours);
- Patrol response and investigative practices, including witness identification and interviewing, follow-up actions, scene protection, evidence collection, storage, and laboratory submission; and
- Multidisciplinary response actions (RTI Report, 2021, sec. 3.1).

The importance of improving these training modules has broader implications that were not articulated in the Report. While RTI’s focus was limited to matters such as the uniformity and thoroughness of training and procedural matters for sex crime officers, these protocols dovetail with legislative issues that affect law enforcement conduct more generally and the constitutional rights of victims.

Guidance for Interviewing Sex Crime Victims

When interviewing sexual assault victims, the Report recommended that the NYPD SVD provide guidance on “key responses associated with victim decision points for interviews in the hospital setting,” such as the following:

- The need for a prompt interview versus delaying the interview;
- Who should be present for the interview;

- What and how an officer should attempt to gather information; and
- Enlisting a victim advocate for response and support (RTI Report, 2021, sec. 3.2.5).

In addition to New York State victims' rights provisions, the Report insisted that the NYPD training must include strategies that comply with such laws as the Health Insurance Portability and Accountability Act, commonly known as "HIPAA."

This recommendation hints at a broader problem for victims when reporting a sex crime: There is no across-the-board policy or procedural consistency that guides the entities that a victim may encounter when reporting a crime. Crime victim advocates have pushed for uniformity in the way cases are handled. "[I]f victims go to the police, if they go to a hospital, if they go to the DA, if they go to a teacher—there should be a cohesive response" (Farrell, 2022, quoting Crime Victims Treatment Center executive director Christopher Bromson).

Furthermore, the Report recommended creating a position for a dedicated liaison between patrol units and the SVD. While officers should be trained on the processes used by sexual assault forensic examiners at hospitals, the liaison should be available to patrols for specialized sexual assault training at the precincts and to be part of the response team when sexual assault reports come to the station. Sexual assault liaison officers could also help to identify officers who would be suitable for promotion to SVD detective positions (RTI Report, 2021, sec. 5.2.2).

SKILLS HONED BY OFFICERS CONFLICT WITH VICTIM-ORIENTATION

One reason for the NYPD's lackluster interest in the necessary changes may be related to the way that victim-oriented approaches require officers to draw upon skills that are distinct from and even opposed to the skills that they use in dealing with suspects. In many ways, the rigidity of policing practices is antithetical to the "best practices" in dealing with victims. The fundamental structure of police departments is a tight chain of command. For good reason in a potentially dangerous line of work, conformity and formulaic thinking is emphasized. In this military-style hierarchy, officers are limited in their decision-making or problem-solving capacities. Although a strict regard for hierarchy may be necessary for a smoothly functioning weaponized police force, this type of indoctrination may hinder the development of effective interpersonal skills required to interact with victims of sex crimes without negatively affecting them. The objectivity that makes good officers and detectives may conflict with the compassionate communication that is necessary when interacting with victims. As a separate matter, failing to integrate victims' rights into NYPD policies and individual-level officer training left a gap where failures were destined to occur.

Allowing Ends to Justify Means

Another reason that officer attitudes may not comport with the particular demands of working with victims of interpersonal crime has to do with the basic mission of policing—to locate and arrest suspected perpetrators. If the pursuit of justice is defined with only one facet of the broader complex system in mind, other important factors may be subverted in the interest of making an arrest. Examples are plentiful: lying to suspects during interrogations; coercing malleable suspects to write “if I did it” statements as quasi-confessions; preserving DNA samples in the local database even after suspects are cleared without explicit consent from those individuals; and preserving victim DNA without consent to be used for investigatory purposes in subsequent unrelated crimes. This suggests part of the problem that is reflected in SVD failings is not about training or protocols. Rather, the problem may arise from the paradoxical orientation of law enforcement to those it serves. Every individual whom the officer encounters is both a part of the “public” that the officer has pledged to serve and protect, and a potential threat to public safety. It becomes even more complicated when the lofty mission of serving the public is reduced to individual interactions and uncertain decisions that will not be understood until the officer has the benefit of hindsight—that is, when it is too late.

Setting Clear Expectations

To further their investigations, SVD detectives must learn to maneuver through the contrasts of standard law enforcement training and trauma-informed approaches. As the auditors noted, the starting point is to set specific guidelines and clear expectations for officers who deal with victims. Once the expectations are formalized, this type of additional training would not be inconsistent with the chain-of-command model.

Uniform Investigation Protocols

With regard to sex crime policies, the RTI auditors summarized their recommendations as follows:

A stand-alone, detailed sexual assault case policy that provides clear guidance and standardized direction to agency personnel is ideal. This policy should encompass an agency response from the first responder’s initial response through the final case disposition and offer a comprehensive guide that can clearly direct personnel in a standardized and organized manner. Additionally, policies should address the complexities of sexual assault cases...Policies should be current, regularly reviewed and updated, and founded in best practices that can be defended upon inquiry. Written policies that address these expectations are critical to providing internal and external uniformity and overall agency transparency and accountability. Strong policies allow agency transparency to

the community and internally define roles, expectations, procedures, and practices ensuring personnel actions are executed in a well-defined and standardized manner (RTI Report, 2021, sec. 3.1).

With regard to SVD competency and training, the RTI auditors made the following recommendations:

The Assessment Team recommends creating a formal written policy for onboarding assigned personnel (investigators and supervisors) to SVD, as doing so would help establish a clear understanding for training expectations and ensure investigators are competent in their job requirements. At minimum, onboarding should include several foundational trainings, including the neurobiology of trauma, victim interviewing, and offender-focused investigations. The Assessment Team also recommends considering additional training opportunities that would enhance overall response and completion of comprehensive investigations. Potential training topics include (1) crime scene and evidence collection and management (presented jointly for investigators and FID personnel); (2) completion of effective comprehensive suspect interviews; (3) a multidisciplinary approach to controlled communication that incorporates advocacy; and (4) accurate and complete investigative documentation (RTI Report, 2021, sec. 5.1.2).

REVIEWS DO NOT ADDRESS FUNDAMENTAL CONFLICTS IN POLICING

In its response to the OIG Special Report on the SVD, the Department outlined its accomplishments and dedication to solving sex crime cases, as well as the training that prepares officers to join the SVD. The NYPD Response noted that officers are:

instructed about the importance of accurate and timely collection of evidence, including the importance of identifying and facilitating the collection of physical evidence that may yield critical DNA evidence [and] forensic evidence such as Sexual Offense Evidence Collection Kits and Drug Facilitated Sexual Assault Blood and Urine Specimen Collection Kits, which can become crucial evidence in investigating and prosecuting sexual assaults...[O]fficers are taught to protect the confidentiality of the survivor's identity. This curriculum was recently reviewed by local advocates and is being updated to reflect their comments and as well as those of national experts (IG Report, 2018, p. 14).

The pledge to victim confidentiality and the welcoming stance toward the input from advocates seem hollow in light of NYPD practices that violate constitutional privacy protections for victims of crime, among others.

Like other law enforcement agencies across the country, the NYPD permanently preserves victim DNA for future investigatory purposes without obtaining explicit consent to do so. The very DNA sample collected in a rape kit with the consent of the victim to further the resolution of his or her case is routinely stored in NYPD databases long after the victim's case is closed. That sample, along with thousands of others for which only limited consent was originally given, is compared to unidentified biological samples at subsequent crime scenes. If the NYPD finds a match to the victim's DNA, the individual will be arrested and possibly convicted. Neither the RTI Report nor the NYPD Response addressed the inherent conflicts of policing. There is no training module that explicitly prepares officers to accept that individual rights may limit their work on the ground, but the limitation is not a failing. It is part of the framework of the nation, not merely the workload of a detective division or police squad.

ACCIDENTAL FIRE AT NYPD EVIDENCE WAREHOUSE

In what seems like a symbolic coda to the NYPD's problems in modernizing its training, its investigatory strategies, and more generally its attitudes, the Department lost thousands of evidentiary files in an accidental warehouse fire at the end of 2022. The NYPD storage facility was located in Red Hook, a community of Brooklyn that feels more remote than its actual geographical distance from the City. Many of the enormous brick structures that once served the local ports continue to serve as warehouses, despite the obsolescence of the ports themselves, and a few of them have been used for decades by the NYPD for long-term storage of evidence in closed or cold cases that are unlikely to yield new leads. In a public statement, the NYPD stated that the warehouse had stored evidence for burglaries and murders, but assured advocates and lawyers that no rape kits were at that site (Hogan & Offenhartz, 2022). However, at the time of this statement, officials had barely begun to inventory the losses.

Typically, samples collected at a crime scene would be placed in individual paper bags (or similar evidence collection containers) that would be grouped together and sealed in larger bag designated for the case when sent to long-term storage. Many of these case "files" would be combined in a single 55-gallon cardboard drum, which would be stacked on pallets in the warehouse. Because the bags and drums were made of paper and cardboard, they easily caught fire and burned to ash during the three days that the facility continued to burn.

The biological evidence that was destroyed in the fire had been associated with old unsolved cases, and although the fire was contained in terms of its physical size, its effects will reach back decades. The cases preceded the modern electronic catalogue systems and other digital databases maintained by the NYPD and the Office of the Medical Examiner. In many instances, the original biological samples located at the warehouse were the only genetic evidence that existed for a given case. The fire all but foreclosed the possibility

of getting final answers on hundreds of cold cases, because although the case documentation is stored in archives at individual NYPD precincts, the actual pieces of evidence for those cases are stored in several warehouses, like the one that burned down in December 2022.

Criminal justice professionals were as concerned about the inability to find perpetrators who have not been arrested as they were about the potential to exonerate individuals who were wrongly convicted using the dormant evidence. The Brooklyn District Attorney's office stated that, for its Conviction Review Unit, which was overhauled in 2014, relatively few exonerations rely on old DNA evidence (Hogan & Offenhartz, 2022).

The warehouse sprinkler system did activate as expected, but the fire spread too quickly for the sprinklers to prevent the extensive damage. Firefighters were unable to save the contents of the warehouse in part because they had to retreat when flames caused a section of the building to collapse.

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