

8-2017

## Perceptions of Why the Sexual Assault Kit Backlog Exists in Cuyahoga County, Ohio and Recommendations for Improving Practice

Rachel Lovell  
*Case Western Reserve University*

Misty Luminais  
*Case Western Reserve University*

Daniel Flannery  
*Case Western Reserve University, [djf6@case.edu](mailto:djf6@case.edu)*

Follow this and additional works at: <https://commons.case.edu/beguncenter-reports>



Part of the [Criminology and Criminal Justice Commons](#)

---

### Recommended Citation

Lovell, Rachel; Luminais, Misty; and Flannery, Daniel, "Perceptions of Why the Sexual Assault Kit Backlog Exists in Cuyahoga County, Ohio and Recommendations for Improving Practice" (2017). *Begun Center for Violence Prevention Research and Education Reports and Briefs*. 14.

<https://commons.case.edu/beguncenter-reports/14>

This Book is brought to you for free and open access by the Begun Center for Violence Prevention Research and Education at Scholarly Commons @ Case Western Reserve University. It has been accepted for inclusion in Begun Center for Violence Prevention Research and Education Reports and Briefs by an authorized administrator of Scholarly Commons @ Case Western Reserve University. For more information, please contact [digitalcommons@case.edu](mailto:digitalcommons@case.edu).

# Perceptions of Why the Sexual Assault Kit Backlog Exists in Cuyahoga County, Ohio and Recommendations for Improving Practice

Misty Luminais, PhD | Rachel Lovell, PhD | Daniel Flannery, PhD



JACK, JOSEPH AND MORTON MANDEL  
SCHOOL OF APPLIED SOCIAL SCIENCES

CASE WESTERN RESERVE  
UNIVERSITY

Begun Center for  
Violence Prevention  
Research and Education  
[begun.case.edu](http://begun.case.edu)

## Executive Summary

In 2015, the Cuyahoga County Prosecutor’s Office (CCPO) was awarded an almost two-million-dollar grant from the Bureau of Justice Assistance (BJA) as part of the National Sexual Assault Kit Initiative (SAKI). The findings presented in this research brief are derived from a process evaluation we conducted in collaboration with the Cuyahoga County Sexual Assault Kit Task Force (SAKTF) which was funded from this award.

It is only recently that nationwide, jurisdictions have begun to acknowledge their accumulation of untested and unsubmitted (“backlogged”) sexual assault kits (SAKs). Previous research has addressed the logistical and structural factors that contributed to the backlog. This research brief approaches this issue from a different perspective—focusing instead on the **Cuyahoga County Sexual Assault Kit Task Force (Task Force) members’ perceptions of the reasons for the backlog**—those who, for the past three years, have been following up on the testing of nearly 5,000 previously unsubmitted SAKs in Cuyahoga County from 1993 to 2009.

It is important to note that we have captured perceptions of what created the backlog, which provides an important glimpse into what was not working about the process according to Task Force members. Through their analyses and critiques, we can observe the shifts in culture and practice that have occurred, due in part to the passage of time and larger societal changes, but mainly derive from Task Force member’s participation in this specialized Task Force created to address the backlog.

### Contributing Factors to the Backlog

The Task Force members identified the following contributing factors to the backlog of SAKs in Cuyahoga County.

- **A paucity of resources.** There was a *sizable and significant* lack of resources for almost every kind of resource in every aspect of the criminal justice process—including a lack of financial and staffing resources for testing SAKs, severe staffing constraints for investigating sexual assaults, a lack of technological resources for locating and maintaining contact with victims and tracking performance and recordkeeping, and a lack of resources for training.

- **Victim blaming and lack of victim-centeredness.** There existed both individual-level and system-level victim-blaming that prevented many SAKs from being tested, thoroughly investigated, and prosecuted. The victim-blaming manifested itself in various forms—including discounting victims’ credibility, misinterpreting victims’ affect, bureaucratically burdening victims to elicit “cooperation” with investigations and prosecutions, allowing detectives to carry unreasonable caseloads and to conduct less than thorough investigations, and in some cases, according to victims, overtly discouraging prosecution.
- **An onerous bureaucracy.** There existed an onerous bureaucracy that lacked sufficient oversight, which negatively impacted the entire process and ultimately led to the stockpile of untested SAKs and missed opportunities to prosecute rapists.
- **A lack of context.** Jurisdictions (understandably) lacked the foresight to fully understand the utility of testing all kits, including non-stranger kits, and entry of DNA samples into the Combined DNA Index System (CODIS) to solve current and future crimes, including serial sexual assaults, for making the community safer, and for saving the community money.

## Improving Practice

The following current practices were identified by Task Force members as practices that have significantly contributed to the success of the Task Force in addressing the backlog.

- **Greater resources.** The Task Force is well-resourced—members are offered frequent trainings and provided reasonable caseloads thereby preventing cases from “falling through the cracks” and Task Force members from being disenfranchised.
- **Greater victim-centeredness.** Including victim advocates on the Task Force and having them be involved during the entire process, including, but not limited to, at the time of notification and at trial, allows victims to have continuity and build rapport with advocates. This in turn decreases the emotional distress experienced by the victims and increases victim

participation in the process. Victim advocates also serve as informal trainers for other Task Force members—teaching more victim-centered approaches *in situ*. The victim-centered trainings provided to the Task Force also serve to lessen victim-blaming.

- **Reduced bureaucracy.** Bureaucracy is lessened since the Task Force is able to function as a separate, multidisciplinary unit and includes investigators, prosecutors, and victim advocates. The “handing off” that typically occurs in the criminal justice process is much less onerous. Additionally, since all are supervised by one lead agency, territoriality is reduced.
- **Positive influence of the media.** While the criminal justice system is typically wary of media exposure, in Cuyahoga County, the media exposure has served to successfully garner various types of support for the initiative and to affirm the importance of the initiative.

## Recommendations

1. **Develop a county-wide sexual assault unit.** Cuyahoga County should develop a county-wide sexual assault unit to investigate current sexual assaults. The Task Force has been able to operate as a full-service, interdisciplinary unit covering the entire county. The Task Force collaborates and communicates across disciplines, across law enforcement jurisdictions successfully because it is task-specific instead of being discipline-specific or jurisdiction-specific. Newer investigators learn how to investigate sexual assaults from more veteran law enforcement. Topic-specific training is provided. Victim advocates are able to informally teach more victim-centered approaches *in situ*. Investigators have close proximity to prosecutors so they do not have to guess what a prosecutor needs for indictment and trial, and they are less likely to feel disengaged in the process because they do not just “hand off” the case. A county-wide sexual assault unit would be able to adopt many of these same promising practices.

A county-wide sexual assault unit would also be beneficial because suburban jurisdictions have more resources but less experience in investigating sexual assaults, which can balance Cleveland Police Department’s (CPD<sup>ii</sup>) fewer resources but more experience. The county-wide unit would also allow for

assaults that cross jurisdictional lines to be connected earlier in the process and information to be shared more easily.

- 2. Ensure all law enforcement have frequent trainings on trauma.** All law enforcement officers and prosecutors should receive more frequent trainings with regards to handling sexual assaults cases. These trainings include but are not limited to, interviewing techniques for those who have experienced trauma (e.g., Forensic Experiential Trauma Interviewing), neurobiology of trauma, and vicarious trauma to Task Force members. The training should be provided on a regular basis to all involved in the process and not just those detailed to investigate and/or prosecute sexual assaults. For example, reporting officers are often victims' first contact with law enforcement and can set the tone for victims with regards to how judiciously they believe their cases will be handled by law enforcement and often directly impact whether victims continue to participate in investigations and prosecutions.

We also recommend that training in trauma interviewing be provided to cadets while in the police academy—before new officers become set in their methods and practices, thereby disrupting the legacy of victim blaming.

- 3. Engage the media in the process.** Jurisdictions that are addressing their backlog should consider having regular engagement with the media. This serves to maintain political buy-in, public support for the initiative, informs the jury pool about the process, and (possibly) increases the number of sexual assaults victims who get SAKs.
- 4. Embed victim advocacy into each step in the process.** Victim advocates should be embedded in every stage of the process—at time of report, at the hospital, during the investigation, during prosecution and disposition, and beyond.
- 5. Regularly monitor performance and progress.** Resources should be allocated to regularly assess the performance of the Task Force as well as current sexual assault investigations and prosecutions. The Task Force's "scorecard" has proven to be successful in monitoring progress, forecasting for resources, engaging with the media, and even securing funding.

## Methodology

Starting in early 2016, we began conducting a mixed-method (e.g., qualitative and quantitative) process evaluation of the Task Force. For this process evaluation, we interviewed eighteen Task Force members, reviewed performance/outcome measures, policies and procedures, analyzed existing data on the team's progress, and conducted participant observation. We employed *purposive sampling* for the interviews of Task Force members. We first sampled based on the job position of the team member (e.g., prosecutor, investigator, victim advocate), as this is a key aspect of the process evaluation. Within job position, we employed a maximum variation ("heterogeneity") purposive sampling in order to increase the diversity of responses.

All eighteen interviews were conducted by the same researcher. The interviews were *semi-structured*. The interviews were audio recorded (except for one, where the respondent chose to not be audio taped). The interviewer also took notes. Audio files from the interviews were transcribed into textual data. These data were coded using ATLAS.ti. We employed iterative coding stages, where the first coding stage involved initial open coding, followed by the categorization and re-categorization of the codes, and ended with the creation of axial/theme codes.

The same researcher who conducted the interviews also conducted *participant observation* as an embedded researcher in the Task Force over a period of over a 12-month period of time. This researcher attended weekly team meetings as well as worked in the Task Force's office on a weekly basis. The researcher maintained field notes, which were reviewed during data analysis and informed the findings.

## Previous Research on Backlogs

Previous research has found that a large number of backlogged SAKs exist for a number of reasons. First, many SAKs pre-date modern DNA forensic analysis, which only became widely available in the late 1990s (National Institute of Justice, 2016; Ritter, 2016). In fact, if SAKs had been tested at the time of collection, as compared to now, they would have had much less success at returning hits (a DNA profile match) in CODIS (Combined DNA Index System) because the technology for testing DNA has vastly improved in recent years. It has also taken years for CODIS to populate with profiles so only in the past few years has CODIS had enough DNA profiles to result in a higher percentage of hits (Calandro, Reeder, & Cormier, 2005;

Johnson et al., 2012; National Institute of Justice, 2016; Ritter, 2016; US Department of Justice, 2014).

Second, when DNA testing became available, it was so expensive that most jurisdictions were not able to test the SAKs. Even when DNA testing was conducted, only certain SAKs were prioritized for testing (Dickson, 2014). Until recently, in most jurisdictions the decision to submit or not and which kits to submit was primarily the responsibility of the investigating officer (Campbell, Feeney, Fehler-Cabral, Shaw, & Horsford, 2015; Pratt, Gaffney, Lovrich, & Johnson, 2006; Ritter, 2011) rather than a prosecutor or following an existing policy in the criminal justice system.

Research in Wayne County, Michigan (Detroit) has identified additional reasons for the large number of backlogged SAKs: victim-blaming behaviors and beliefs; the lack of written policies and protocols for submitting SAKs for DNA testing; budget cuts that resulted in a reduction in the number of sexual assault detectives and crime lab personnel; inefficient DNA testing methods and/or equipment; and high turnover in police leadership (Campbell et al., 2016). Campbell et al.'s (2016) findings concerning bias in detectives' evaluations of victims' credibility support earlier studies, including those in Los Angeles (Peterson et al., 2012) and Washington, D.C. (Human Rights Watch, 2013), among others (Jan, 2004; Ritter, 2016). We found many of these factors to also be contributing factors to the backlog in Cuyahoga County, as discussed in greater detail in this report.

Additional contributing factors to the backlog include strained relationships between police and prosecutors, lack of training (Bettinger-Lopez, 2016), SAKs being viewed as a prosecutorial rather than an investigative tool (Pratt et al., 2006; Ritter, 2016), concerns about the timeliness of the testing, closing cases before testing can be submitted (Strom & Hickman, 2016), lack of community-based advocacy services (Ritter 2016), outdated record keeping (Nelson, 2013; Ritter, 2016), and no centralized storage location for SAKs (Human Rights Watch, 2009).

## **Findings**

The interdisciplinary nature of the Task Force (the team includes prosecutors, investigators, and victim advocates), combined with its separation from other agencies within the criminal justice system, gives Task Force members the space and perspective to critically reflect on past policing cultural norms and contrast those



to their current experience. We present the key contributing factors to the backlog of SAKs, according to Task Force members as well as current, promising practices. From these findings, we provide recommendations for Cuyahoga County and other jurisdictions addressing their backlog of SAKs in order to ensure no new backlogs develop.

## **Resources**

### ***Prior Practice: The Paucity of Resources***

**The Conveyor Belt.** During the time period when most of these cases were originally reported<sup>iii</sup>, Cleveland was experiencing an increase in violent crimes and a reduction in resources to address these crimes, as were most other urban metropolitan areas around the country. This created pressures within the CPD to quickly close cases, in part because so many cases were piling up. *The metaphor of the conveyor belt is useful here.* Cases continued to come down the belt and if detectives did not keep up with their investigations, the cases would pile up. Given the amount of personnel that the Special Crimes Unit (SCU—the unit responsible for investigating sexual assaults and felony crimes against children, previously known as the Sex Crimes Unit) within CPD had during this time period and the number of reported sexual assaults to investigate, detectives were logistically not able to fully investigate every case (Atassi 2014; Dissell 2012). In 1996, the unit’s seven investigators, plus two on loan from elsewhere, were working approximately 125 sexual assault reports a month (in addition to the other sexually-based crimes as well as felony crimes against children reports) (Martin, 1996). In 2001, there were an average of 82 sexual assault cases per month for the first eleven months of the year that had to be handled by the twelve detectives in the unit. This did not include the other cases handled by the unit, including those all the other crimes the unit investigations (i.e., other sexually-based crimes and felony crimes against children) (Tobin 2002).

In terms of staffing, many experienced Task Force investigators noted in the interviews that SCU was terribly understaffed, a problem which persists today. The Task Force members’ perceptions of “too many cases and not enough personnel” is supported in the research team’s findings of why and how cases were handled at the time (Lovell, Flannery, Overman, & Walker 2016). In general, if there was a “hiccup” or difficulty/stall in a case, it would be shunted to the side, either quickly closed or languish on the shelf before becoming part of the backlog. If a victim could

not be located or did not return a call or missed an appointment or could not identify a suspect, or any other number of difficulties, they had to move on because more cases were coming down the conveyor belt.

Task Force members voice a great deal of ambivalence regarding how detectives at the time handled sexual assaults. On the one hand, they expressed empathy regarding the stunning lack of resources endured by prior detectives—including financial, human, and technological resources. This pervasive lack of resources led Task Force members to imagine the sense of disenfranchisement that was likely experienced by prior detectives. Several Task Force members recalled (because they were law enforcement at the time the backlog first began) some detectives going all-out to follow every investigative lead, despite bureaucratic obstacles,<sup>iv</sup> and taking sleeping pills at night because of the stress of the caseloads.

On the other hand, after reviewing and reflecting on so many case files, some Task Force members said that it appears that the detectives at the time did not put forth the effort needed to reach victims—doing the bare minimum to cross the *t*'s and dot the *i*'s. In fact, some Task Force members suggested that they could tell exactly how an investigation would end just by knowing which detective worked the case.

Compounding the lack of staff was the difficulty in locating victims. In many cases, there appeared in the case files to be minimal effort to contact victims, which usually included (according to the police reports) a phone call and sometimes several phone calls, a certified letter, and, on occasion, a physical visit to the address given at the time of the report. One team member noted, in regards to lack of exertion in finding the victim, “I think it’s very easy for people to become complacent with this idea that people don’t care about their case, and so if they don’t care, why should I?” Victims who did not respond immediately to phone calls or missed appointments were considered “uncooperative,” and often had their cases closed peremptorily by the City of Cleveland’s municipal prosecutor.

**Crime Labs.** DNA labs also felt the lack of resources, particularly in terms of equipment and personnel. Testing SAKs was costly, took a lot of time, and the results were not useful without a sample to which to compare them. In fact, one team member recalled,

*“DNA testing really didn’t exist for us [Cleveland] until, as I mentioned earlier, BCI [Bureau of Criminal Investigations, the state crime lab]*

*opened a crime lab in 2002 in Richfield, Ohio and that is when they officially started taking DNA. Prior to that it is my understanding from talking to a few different people that if we absolutely needed to, like, in the late nineties we could have sent something to a lab in St. Louis... but it was so cost prohibitive like one case would have been \$5,000 for testing. So obviously, we didn't do it."*

Since the state crime lab bore the cost of testing SAKs, it became a strong voice in the decision for whether or not to go forward with testing. Scientists would be making decisions about what evidence would best support a prosecutor's case. Many times, this resulted in SAKs not getting tested. When testing became more cost effective, the state crime lab then became overwhelmed with requests for DNA tests. Requests exceeded their capacity; therefore, the lab decided to stop testing kits for "uncooperative" victims—defined as victims who did not want to participate with the investigation or prosecution. In other words, since all SAKs could not be tested, BCI had to determine which ones would be tested, and victim "cooperation" became one of the key factors. In fact, when inventorying SAKs, a number of "boomerangs" were identified—the SAKs that had been sent to the lab, as proved by the lab barcoding, but had been returned to the submitting department with no testing performed.

### **Improved Practice: Greater Resources**

The current Task Force is well-resourced, especially in contrast to the CPD's Sex Crimes Unit in the past or the present. Based on data collected from the Task Force, investigators complete on average 37 investigations per investigator per year. Based on data from CPD, by contrast, in 2015, CPD had 803 reports of rape, gross sexual imposition, unlawful contact with a minor, and sexual battery. CPD's SCU unit averages between 10 to 14 detectives, which makes their yearly caseload of just these investigations to be approximately 57 to 80 per detective per year. But, this is only for reports of the main four types of sexually-based crimes. CPD's SCU is also responsible for investigating all felony abuse of a child reports (which can, but does not necessarily, overlap with above mentioned offenses).

When asked whether they felt supported and resourced by the Task Force, almost all members responded affirmatively. They felt they have what they need to investigate, prosecute, and provide services for the victims. While they report that more personnel would also be welcomed, they did not report feeling completely

overwhelmed by the caseloads. *Reasonable caseloads provide them the time they need to focus on all victims, not just those that fit into an ideal mold.*

In addition, the Task Force's stand-alone structure helps maintain a sense of investment, as all team members see the cases from beginning to end and know that even cases where the victim has vulnerabilities—such as drug or alcohol use at the time of the assault, homelessness, or mental health issues—can be successfully prosecuted (Lovell, Flannery, Overman & Walker 2016).

The members of the Task Force acknowledged that their position as a well-resourced unit is unusual and not guaranteed in the long run. Extensive resources have been provided by the CCPO, Cuyahoga County Council, other collaborating agencies on the Task Force, federal grants, and the Ohio Attorney General's Office, which paid for the testing of all SAKs and provides investigating agents to the Task Force as well. Team members also recognized that the legislature is fickle and that source of funding cannot be relied on indefinitely. As mayors and city councils continue to slash budgets, departments have relied on federal money in the form of grants as a stopgap measure to keep the organization afloat. One person noted, "Whatever the feds are going to pay for is what you do." Even within the Task Force, there was some anxiety about from where (or whether) the next round of funding will come.

Legislative mandates also removed the criminal justice system's discretion in deciding which SAKs should be tested. Ohio Revised Code 2933.82 mandates that all backlogged SAKs be tested and all current SAKs be submitted to a lab for testing within 30 days of collection. Prior to the passage of this law, CPD did not have a policy regarding when a SAK would be submitted for testing so it is unclear as to how decisions were made regarding which cases got more or less attention and which cases were actually submitted for testing, once testing became available.

*Therefore, there is a far-reaching, positive impact of having a conveyor belt that runs at a reasonable speed. Having enough staff provides more thorough investigations, which in turn leads to more indictments and convictions, which combats the disenfranchisement of investigators who then do not have to decide which cases "deserve" a portion of the limited resources available.*

## Victims

### ***Prior Practice: Victim-Blaming and Lack of Victim-Centeredness***

Many law enforcement practices can invalidate victims' experience, some subtle and others more overt. These practices contributed to SAKs not being tested—especially for victims who were perceived as being unreliable or not wanting to move forward.

**A Woman's Crime.** One of the pervasive charges laid against police officers, detectives, and prosecutors in the past was that crimes that primarily targeted women, including sexual assault, were taken less seriously than gender-neutral crimes, such as murder or robbery. One team member noted, "If women were raping men, it would be a totally different story about the backlog."

**Victim-Blaming and Lack of Victim-Centeredness.** Many Task Force members believed that victims were often discounted because of their behavior at the time of the assault, which was used to undermine their credibility—including being under the influence of drugs or alcohol, engaging in prostitution, having a mental illness, being homeless, or even walking alone in an unsafe neighborhood. This type of victim-blaming led, according to current team members, to the backlog because these SAKs were often given lower priority because the detectives assumed they knew what was going on. In fact, one team member stated, "Now I think that we have learned so much more about sexual assault and we know that those are vulnerable populations anyway, they are likely to be raped because they're the perfect victim, so that's not going to bar me from going forward." Members of the Task Force recognized that "people in the poorest neighborhoods got the poorest service because they had the least political influence." In fact, our research supports this supposition in that the victims in the cases are the more marginalized—almost all female, younger, disproportionately people of color, and live in more impoverished areas (Butcher, Lovell & Flannery, 2016; Lovell & Luminais, 2016).

Task Force members also stated that in the past detectives might have misinterpreted victims' "inappropriate" affect as an indicator of deceit. More recent studies and training emphasize that people handle trauma differently and may not always present with the "appropriate" affect. People who have been sexually assaulted can act very "flat" or confused which could be misconstrued by the reporting officer or detective as the victim being deceitful.

Many obstacles existed for victims to “cooperate.” Basically, the victim had to come to the police instead of the police going to the victim. Thus, “cooperation” meant being easily available when detectives and prosecutors were available, making multiple trips to the police station and courthouse during working hours (without provided childcare, perhaps without a personal vehicle)—all without the benefit of a victim advocate to help navigate the system. And, all of this had to be navigated on top of having just experienced immense trauma. With the overload of cases, a hint of noncooperation could derail an investigation and get it shelved or closed.

According to the Task Force members, several victims said at the time that they wanted to participate in the investigation but were never contacted by detectives and several victims also reported to Task Force members that at the time they were directly discouraged from moving forward.

**“Outdated” Methods Used in Investigating Sexual Assaults.** In the past, “the mindset had always been that investigating a sexual assault is no different than investigating any other criminal offense,” according to one team member. This type of “who, what, when, where, how” approach has shown to be counterproductive when investigating sexual assaults.

### ***Improving Practice: Greater Victim Centeredness***

**Presence of Victim Advocates.** A recent practice in Cuyahoga County has been to embed victim advocates in the criminal justice process. In 2011, CPD embedded a victim advocate from the Cleveland Rape Crisis Center in the SCU. The Task Force currently has four full-time victim advocates and one victim advocate supervisor. The victim advocates have proven to be an essential part of the Task Force—their job is to remain in contact with victims to ascertain their desire to be a part of the process, connect victims to services, and keep victims apprised of their cases. The addition of victim advocates also eases the burden on the investigators to act as a “jack-of-all-trades” in maintaining relationships with victims. The inclusion of victim advocates on the Task Force and having them be actively engaged in the entire process allows continuity with the victim, thereby building rapport. This serves to decrease the emotional distress experienced by the victims and increase victims’ participation in the process.

Furthermore, participant observation by our research team has shown the positive impact of having victim advocates as part of the investigation and prosecution team.

Investigators and prosecutors learn, *in situ*, in an informal setting more victim-centered approaches, which in term helps keep victims and their voice included in the process.

**Increased Training and Improved Investigative Practices.** Current Task Force members are, and continue to be, trained in effective methods for investigating sexual assaults, the neurobiology of trauma, and vicarious trauma. Ongoing training in trauma-informed interviewing techniques has helped Task Force members interact with victims in a more victim-centered manner—helping to elicit details overlooked in the first investigation. This on-going training can reform attitudes and practices, as demonstrated by the current Task Force.

Additionally, the Task Force members acknowledge that today’s sexual assault investigations also benefit from improved technology, databases, and social networking platforms—making it easier to locate and remain in contact with victims.

## **Bureaucracy**

### ***Prior Practice: Unwieldy Bureaucracy***

**Lack of Oversight by Bureaucracy.** Bureaucracy was often cited as a reason for the backlog, as red tape and lack of oversight made the system unwieldy and even dangerous. One person critiqued the “straight release program where they didn’t charge the individual; they released him for future indictment and then they would drop the ball and not indict him. It was costing lives, literally lives.” The researcher team’s findings support the statement that many of cases failed to result in an indictment at the time (Lovell, et al., 2016). With the advantage of hindsight and current research, now that Task Force members are aware of how often rapists go on to reoffend, either another sexual assault or a different, serious offense (see Lovell, Flannery, and Luminais, 2017), they are frustrated by how often perpetrators fell through the cracks.

**Lack of Quantitative Oversight by the Bureaucracy.** The Task Force members perceived the lack of oversight and assessment of performance by the system as partially responsible for the sheer volume of cases that did not go forward. Very few statistics were collected by departments/agencies at the time making comparisons over time or between agencies nearly impossible. SAKs were not tracked.

**Territoriality and Cross-Agency Communication.** Team members also observed

the ways in which territoriality prevented justice from being served. They believed that agencies' reluctance to ask for help impeded investigations, particularly among smaller municipalities. Many team members critiqued the lack of collaboration and communication between and within agencies.

### ***Improved Practice: Cutting through the Bureaucracy***

**Oversight of the Bureaucracy.** As compared to past practices, it is the current practice of the Task Force that all SAK cases be presented to the county assistant prosecutors, rather than the City of Cleveland's municipal prosecutor (who does not handle these types of felony cases), and at least two prosecutors must agree that the case is not sufficient to indict. In the case of a disagreement between the two prosecutors, a third will become involved. The addition of performance measures and support from the top means that as many cases as possible will be pursued. Many times, prosecutors will suggest other avenues of investigation before they are willing to close a case. This is a radical departure from previous practice, whereby Task Force investigators often must make an argument as to why they want to close a case rather than why they want to keep it open to do further investigation to make a case prosecutable.

**Regular Quantitative Oversight by the Bureaucracy.** In contrast to the lack of performance assessments in most law enforcement agencies, the Task Force keeps a daily "scorecard" of their process, forecasting, and tracking of SAKs from testing, to investigation, to prosecution, and finally, to disposition. These statistical data points allow for their own self-monitoring of the process as well as a wide dissemination of results and cross-jurisdictional comparison.

**Overcoming Territoriality and Increasing Collaboration and Communication.** Now, through participation in the Task Force, members see that as one said, "it's not about the agency or the individual police officer; it's about getting justice for the victim." This cultural shift is significant as it indicates that territoriality can be overcome and does not necessarily have to be a component of policing. This may also address the disparity in experience between jurisdictions. On the one hand, CPD was overwhelmed by the number of cases but was at least gaining firsthand experience; on the other, smaller jurisdictions encountered many fewer sexual assaults but perhaps lacked the necessary experience to handle them.



### **Prior Practice: A Lack of Context**

Finally, what might have been the ultimate driver of the backlog of unsubmitted SAKs was jurisdictions not realizing the utility of testing. At the beginning of the current backlog, CODIS and its associated state databases were not in existence. Even after CODIS was created in 1998, it was underutilized, in part because “Nobody ever really set forth a policy or understood the implications of CODIS,” according to a team member. Today CODIS is a powerful investigative tool that only becomes more robust as more profiles are added. Prior to CODIS, DNA was only useful if there was a sample against which to compare it, meaning a sample from an identified suspect.<sup>v</sup> After the creation of CODIS, stranger SAKs were accepted by laboratories but SAKs with named suspects were not.

Additionally, cases were looked at in isolation, so that many serial offenders were “just never prosecuted, for whatever reason,” stated a Task Force member. At the time, no one knew serial offenders were as common as they are and very rarely were cases with relationship crossover (where an offender sexually assaults both strangers and non-strangers) examined closely. Lacking this larger context of the problem, SAKs languished untested for years despite their possible probative value.

To explain more fully, there was a missed opportunity that occurred when detectives, prosecutors, or the laboratory decided that the SAK was not needed to make the case, such as in cases where consent was the central question rather than whether or not sexual contact occurred. Not testing those kits inadvertently made it easier for serial rapists to remain undetected, which ultimately resulted in making the community less safe and costing the community more money (Singer, Lovell & Flannery, 2016).

### **Promising Practice: Positive Influence of Media**

Nationally, the current focus of most of the media is on the overwhelming number of backlogged kits. Locally, Cuyahoga County has also been subject to this focus—on the sheer number of SAKs that had never been tested. However, more current coverage is more positive in nature—covering the disposition of a large number of cases as well as on identifying and prosecuting more “headline-catching,” violent offenders. This is partially the impetus among the Task Force to reexamine every case for overlooked leads, including those without DNA hits, which has in turn led to the high number of indictments and convictions in Cuyahoga County, compared with other jurisdictions. In particular, the *Cleveland Plain Dealer* has put a great deal of

pressure on the county, city, and court system to be open about their processes and the Task Force, in turn, has given greater access to the media.

## **Discussion and Conclusion**

The existence of such a large number of backlogged SAKs is evidence of a much larger problem with how the criminal justice system responds to gender-based crimes. Our findings also speak not only to why SAKs were not tested but also to the larger issue of investigating and prosecuting sexual assaults.

Due to its interdisciplinary nature and combined with its separation from other agencies, the Task Force has been able to critically examine past practices, as it existed when the backlog was created as well as current, promising practices. An overwhelming lack of resources, gender bias, communication and territoriality issues, and victim-blaming are identified as areas of weakness in the past. These failings intersected with larger societal issues, such as crimes against women, in general, not being recognized as severe as those considered gender-neutral and the most vulnerable populations being the least likely to be taken seriously. In addition, there was a general lack of knowledge about what the utility of testing kits could be. Examining current attitudes and perceptions about how the backlog was handled in the past reveals how shifts in past attitudes and perceptions are possible.

In general, the Task Force members perceive a cultural change in how society and the criminal justice system approaches sexual assault—moving toward a less victim-blaming and more victim-centered approach. Members often talk about “how it used to be.” There is strong evidence, from interviews and observations we conducted, to suggest that that perhaps we have in some important ways moved past “how it used to be,” at least as it relates to overt victim-blaming and for some individuals in the criminal justice system.

To ensure systemic, victim-centered change, the system must continue to address many of the barriers presented here—a paucity of resources, unnecessary bureaucratic hurdles, victim-blaming, and lack of training in victim-centered approaches to sexual assault.

The SAKI grant has given the Task Force the opportunity to be on the cutting edge of developing promising practices, which, as they are tested across sites that are similarly advanced in the process (such as Detroit and Memphis), hold the potential to set the standard as best practices. The reflections of the Task Force members, as

they evaluate and critique how cases in the past were handled, are invaluable as we move forward in instigating national reform in how backlogged SAKs are handled.

## References

- Atassi, L. (2014). "Cleveland Police brass respond to recommendations from national police research and policy organization." Cleveland.com, May 5, [http://www.cleveland.com/cityhall/index.ssf/2014/05/cleveland\\_police\\_brass\\_respond.html](http://www.cleveland.com/cityhall/index.ssf/2014/05/cleveland_police_brass_respond.html)
- Bettinger-Lopez, C. (2016). The Sexual Assault Kit Initiative: An Important Step Toward Ending the Rape Kit Backlog. Retrieved from <https://www.whitehouse.gov/blog/2016/03/15/sexual-assault-kit-initiative-important-step-toward-ending-rape-kit-backlog>
- Butcher, F., Lovell, R., & Flannery, D. (2016). *Cuyahoga County Sexual Assault Kit (SAK) Pilot Project: Report on Victims*. Retrieved from The Begun Center for Violence Prevention Education and Research at the Jack, Joseph and Morton Mandel School of Applied Social Sciences at Case Western Reserve University <http://begun.case.edu/sak/>
- Calandro, L., Reeder, D. J., & Cormier, K. (2005, January 6). Evolution of DNA for Crime Solving - A Judicial and Legislative History. *Forensic Magazine*. Retrieved from <http://www.forensicmag.com/article/2005/01/evolution-dna-evidence-crime-solving-judicial-and-legislative-history>
- Campbell, R., Feeney, H., Fehler-Cabral, G., Shaw, J., & Horsford, S. (2015). The National Problem of Untested Sexual Assault Kits (SAKs): Scope, Causes, and Future Directions for Research, Policy, and Practice. *Trauma, Violence, & Abuse*.
- Dickson, C. (2014). How the US Ended Up with 400,000 Untested Rape Kits. Retrieved from <http://www.thedailybeast.com/articles/2014/09/23/how-the-u-s-ended-up-with-400-000-untested-rape-kits.html>
- Dissell, R. (2012) "Sex-crimes, missing-person policies revised; issues remain." *Plain Dealer*, March 31, p.B1.

- Human Rights Watch. (2009). *Testing Justice: The Rape Kit Backlog in Los Angeles City and County*. Retrieved from <https://www.hrw.org/report/2009/03/31/testing-justice/rape-kit-backlog-los-angeles-city-and-county>
- Human Rights Watch. (2013). *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*. Retrieved from <https://www.hrw.org/report/2013/01/24/capitol-offense/police-mishandling-sexual-assault-cases-district-columbia>
- Jan, J. (2004). Beyond Belief?: Police, Rape and Women's Credibility. *Criminal Justice: International Journal of Policy & Practice*, 4(1), 29-59.
- Johnson, D., Peterson, J., Sommers, I., & Baskin, D. (2012). Use of Forensic Science in Investigating Crimes of Sexual Violence: Contrasting Its Theoretical Potential With Empirical Realitie. *Violence Against Women*, 18(2), 193-222.
- Lovell, R., Flannery, D., Overman, L., & Walker, T. (2016). *What Happened with the Sexual Assaults Reports? Then Vs. Now*. Retrieved from The Begun Center for Violence Prevention Education and Research at the Jack, Joseph and Morton Mandel School of Applied Social Sciences at Case Western Reserve University <http://begun.case.edu/sak/>
- Lovell, R., Flannery, D. & Luminais, M. (forthcoming). Lessons Learned: Serial Sex Offenders Identified from Backlogged Sexual Assault Kits (SAKs). In *The Cambridge Handbook of Violent Behavior and Aggression*, 2<sup>nd</sup> Ed. Vazsonyi, A., Flannery, D. J., & Delisi, M. (Eds.) New York, NY: Cambridge University Press.
- Lovell, R. & Luminais, M. (2016). Sexual Assault Kits: Changing What We Know about Rape. Presented at The Social Justice Institute at Case Western Reserve University. September 13.
- Martin, M. (1996). Limited Resources Hinder Rape Intervention. *Plain Dealer*. March 10, B1.
- National Institute of Justice. (2016). Untested Evidence in Sexual Assault Cases. Retrieved from <http://www.nij.gov/topics/law->

enforcement/investigations/sexual-assault/Pages/untested-sexual-  
assault.aspx#understanding

Nelson, M. S. (2013). *Analysis of Untested Sexual Assault Kits in New Orleans*.

Retrieved from National Institute of Justice

<https://www.ncjrs.gov/pdffiles1/nij/242312.pdf>

Peterson, J., Johnson, D., Herz, D., Graziano, L., & Oehler, T. (2012). *Sexual Assault Kit Backlog Study*. Retrieved from National Institute of Justice

<https://www.ncjrs.gov/pdffiles1/nij/grants/238500.pdf>

Pinchevsky, G. M. (2016). Criminal Justice Considerations for Unsubmitted and Untested Sexual Assault Kits: A Review of the Literature and Suggestions for Moving Forward. *Criminal Justice Policy Review, DOI: 10.1177/0887403416662899*, 1-21.

Pratt, T. C., Gaffney, M. J., Lovrich, N. P., & Johnson, C. L. (2006). This Isn't CSI: Estimating the National Backlog of Forensic DNA Cases and the Barriers Associated With Case Processin. *Criminal Justice Policy Review, 17*(1), 32-47.

Ritter, N. (2016). *Down the Road: Unanalyzed Evidence in Sexual Assault Cases*. Retrieved from National Institute of Justice  
<https://www.ncjrs.gov/pdffiles1/nij/249805.pdf>

Singer, M., Lovell, R., & Flannery, D. (2016). *Cost Savings and Cost Effectiveness of the Cuyahoa County Sexual Assault Kit Task Force*. Retrieved from The Begun Center for Violence Prevention Education and Research at the Jack, Joseph and Morton Mandel School of Applied Social Sciences at Case Western Reserve University <http://begun.case.edu/sak/>

Strom, K. J., & Hickman, M. J. (2016). Untested Sexual Assault Kits: Searching for an Empirical Foundation to Guide Forensic Case Processing Decisions. *Criminology & Public Policy, 15*(2), 593-601.

Tobin, M. (2002). Cleveland Sex Cimes Neglected: Police Division Becomes Target of Internal Investigation. *Plain Dealer*. May 26, A1.

US Department of Justice. (2014). Advancing Justice through DNA Technology: Using DNA to Solve Crimes. *US Department of Justice*. Retrieved from

<https://www.justice.gov/ag/advancing-justice-through-dna-technology-using-dna-solve-crimesse.edu>

## Acknowledgments

This project was partially supported by Grant Nos. 2015-AK-BK-K009 and 2016-AK-BK-K016 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice. The pilot research was supported by a research grant from the Cuyahoga County Prosecutor's Office.

---

<sup>i</sup> The term backlogged is technically defined as a SAK that has been submitted to a lab for testing but has not been tested after 30 days. The term is more also used, generally, to refer to any unsubmitted and/or untested SAK regardless of how long the SAK has remained unsubmitted or untested (Pinchevsky, 2016). In this brief, we used the more general term "backlog" to refer to any SAK not submitted to a forensic lab and/or not forensically tested.

<sup>ii</sup> The official name is the Cleveland Division of Police but are most often referred to as the Cleveland Police Department. Over 88% of the backlogged cases in Cuyahoga County are from CPD.

<sup>iii</sup> The Task Force is currently following up on SAKs from 1993 to 2009. However, given the statute of limitations in Ohio, the Task Force has prioritized cases from 1993 to approximately 1998.

<sup>iv</sup> Another contribution factor in this split in perception is the bifurcation of experience among Task Force members, with half being relatively new to sex crime investigations and the other half being retired or otherwise seasoned members of law enforcement, with the new members interpreting through current investigative law enforcement practice and culture as it relates to sexual assault.

<sup>v</sup> Ohio currently has over 650,000 profiles for comparison, one of the highest of any state proportionate to the size of the population. FBI. "CODIS – NDIS Statistics." 2016. Last retrieved December 29, 2016.

<https://www.fbi.gov/services/laboratory/biometric-analysis/codis/ndis-statistics>.