SEXUAL ASSAULT: THE POLICE INVESTIGATION PERSPECTIVE

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Victoria Police has a very important role to play in the administration of justice when a report of sexual assault is made by the community. The following paper will describe the detective's perspective of our responsibilities, the judicial system and the inhibiting factors that affect the police ability to actually achieve the objectives and expectations of the community.

In our society there is a natural tendency for an adult person to make sexual advances towards another adult, and that is acceptable. It must be recognised, however, that at any stage the person who is approached has the right to say 'no', either by word or action. Where the police investigation commences is, in fact, when that 'no' is ignored. When that occurs we have a criminal offence committed against an individual and, in the author's view, against society.

Police Objectives

It is imperative that the police, in accepting its responsibilities be supported in its endeavours. The objective of any police force is the prevention of crime, the protection of the community and the identification and apprehension of such criminals within the community. It is equally important that the other organisations and support agencies within the administration of justice, understand and appreciate that the procedures adopted by the police force are implemented in accordance with the law, community welfare and expectations of society.

It should be clear to all that the three cardinal rules which apply to the investigation of any criminal offence must be adhered to:
• the first rule of any investigation is to establish whether a crime has been committed;

• if a crime has been committed, the second rule, is that the identity of the offender must be established; and

• the third rule is to establish a connection between the offender and the crime. That nexus must consist of legally admissible evidence that is capable of withstanding the critical examination of an adversarial justice system that places the high burden of proof upon the prosecution.

Police do not have the luxury of readily accepting information on its face value, as it is the police role to eventually present that information to a legal system that is critical in the extreme: a system that is adversarial in nature and one which provides the accused with an advantage over prosecution from the outset.

This advantage is the standard of proof beyond reasonable doubt to be adopted unanimously by the jury of twelve before the accused can be judged guilty of a crime. Once convicted, it is the responsibility of our judges to ensure that they are fully aware of the consequences of such criminal activity, not only to the victim but also to the victim's family and the community. They must also ensure that the penalties of such crimes are representative of the community's expectations.

**Duty to inquire**

It must be understood that it is not the role of the police to judge guilt or innocence. It is the role of the police to establish the facts in issue and then to present those facts to a court.

This duty to inquire and search for the facts may or may not agree with the allegations as provided by the accuser and, in some cases, it may be impossible to determine the true facts. Even where there is no reason to doubt the word of the complainant, there are many cases that fail to reach the required standards of evidence for a prosecution to be launched. It is here, in this search for the facts, that often leads to criticism of the police. It is not a matter of belief or disbelief; it is a matter of establishing the facts.

The police officer must approach the investigation of reported sexual offences in an objective manner as the investigator would the investigation of a reported fatal accident, fire or the death of a small child in a cot. The officer must inquire as to the facts which may convert the fatal motor car accident into culpable driving, the fire into an arson or the infant death into murder.

**Victim handling**

The officer who inquires into reported sexual assaults must be sensitive to the delicate physical and emotional state of the victims. The police force aims to educate its members and allocate appropriate specialised units to coordinate victim welfare and the application of investigative procedures.

The inquiry as to the true facts can only reveal two scenarios: either the commission of the most degrading, humiliating and soul destroying crime that can be committed against another human being, or a false report motivated by greed, fear or pressure from those
within the victim's environment or psychological cause. In either case, the responsibility of a police force is to achieve its objectives with the least amount of trauma inflicted upon the complainants as they pass through the judicial system.

The Victorian Scene

Victoria Police, in 1988, conducted an evaluation of its procedures and investigation techniques required to combat the ever increasing rate of reported sexual offences within that state. The police force adopted the recommendations in the formation of the specialised Rape Squad, the transfer of a Child Exploitation Unit to the Crime Department, the training of detectives at all levels and Community Policing Squad members in victim sensitivity.

The issuing of instructions on victim handling procedures were the basis of the current 'code of practice for sexual assault' which was formally adopted in March 1992. This code sets the minimum standards and procedures to be adopted by all members of the police force from the time of the initial report until the conclusion of any court hearing. Other initiatives include the creation of the Assistance Support Kit and the development of liaison and protocols with other victim support units.

The police forces of Australia seek a united approach in the manner they treat the victims of such crimes and the procedures adopted in their investigation. We believe the Victorian blueprint, which is under constant review, is the basis for professional investigation combined with appropriate victim handling. The Victoria Police do accept that we have a responsibility to victims of such crimes while the inquiry is conducted. It is also acknowledged and accepted that the police force is accountable for its performance while the reporter of such crimes is under their umbrella.

The Criminal Justice System

The other organisations associated with a sexual assault victim, including the government, welfare agencies, director of public prosecutions, defence lawyers and the judiciary, must also adopt the duty to inquire, self-educate, accept responsibility and be accountable.

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power resolution, which was passed by the United Nations General Assembly on the 11 December 1985, was the first serious attempt to document the manner in which victims of crime should be treated. Before this time, it was assumed that the agencies within the criminal justice system possessed mechanisms within their organisations which could effectively deal with the victim's plight. In reality, however, a huge void existed between what organisations perceived that victims of crime required by way of emotional and material support, and what victims actually needed. An international set of guidelines which reflected the responsibilities a society had to its victims of crime, was therefore seen as necessary. Some of the issues raised by the United Nations that sought to address victims of crime were:

- the right of victims to be treated with compassion by criminal justice authorities;
- the right of victims to be kept informed of occurrences;
- the right of victims of crime to be duly compensated; and
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- the right to have access to the best available support services.

The adoption of the charter of victims' rights by all Australian states has ensured that those agencies within the criminal justice system, (the police and courts in particular), are now held accountable for victim welfare at all stages of their dealings with victims.

**Victim impact**

One of the important issues which was addressed was the right for the victims of crime to express their ordeal through a written or verbal statement to the court. The belief amongst most victim support groups was that victim's rights had been usurped by a criminal justice system which championed the accused, but paid scant regard to the victim's vulnerability and sense of powerlessness. This reduced sense of worth was further exacerbated by a belief inherent in the criminal justice system, that a victim is merely a witness for the prosecution.

We must be careful that the victim impact statements are not seen as a panacea for the problems that victims confront. The impact of such crimes on the individual has permanent emotional and psychological consequences. The effects on those close to the victims also include long-term welfare needs which affect them as individuals and their relationship with the victim. The effect on the community varies from a private event affecting few, to a serial rapist placing the complete community under siege.

From police officer's experience and observations over many years of investigating crimes against persons, the most effective emotional and psychological remedy to a victim's welfare is the identification, arrest, conviction and appropriate sentencing of the perpetrator.

**Police powers**

The government has a responsibility to give its servants, the police force, the appropriate authority to achieve the community's expectations and objectives. Our investigations are inhibited by this lack of authority.

The serial rapist who operated in the Melbourne suburbs of Armadale, Prahran, Malvern and Frankston was responsible for an alleged eleven aggravated rapes within our community. Since 1989, while masked, armed and gloved, he stalked women throughout Melbourne. One of the most inhibiting factors in trying to identify this criminal was that the police were unable to demand the names and addresses of persons on the streets.

Police officers conducted many operations within this community in an attempt to identify this criminal in order to prevent further crimes. Police were placed in the community to search the areas, stalk the offender and hopefully identify those people within the community that he had under siege. Detectives were assigned to walk in those areas among the many high-rise flats. They were observing in laneways, streets and even looking through windows. When a police officer had observed someone of interest and approached him to ask his name and address, the suspect was able to walk away.

Victoria police cannot identify him because they do not have either the authority to demand such particulars or have the resources to follow that person to a motor vehicle, or wait for him to drop litter, to enable police authority to demand his name and address.

The detective has a duty to identify possible suspects, but unless granted the power to demand names and addresses and provide proof of identity, officers cannot implicate them if they are involved or eliminate them if they are not. If in fact the individual is there for ulterior
motives, the establishing of his identity acts as a preventative measure, in that the person would have second thoughts about returning to the area or committing further crimes.

The Chamberlain Bill on Police powers, which was introduced in 1988 to the Victorian Parliament's Legislative Council, recommended that the power to demand names and addresses should be given to the Victoria Police as they have in other states. It remains however, on notice of motion. That these recommended police powers would assist police to protect society even more effectively and it is now an appropriate time for this matter to be reconsidered.

There exists another inhibiting factor confronting detectives who are trying to identify the perpetrators of these types of crimes. A further attack occurs again in Armadale and the Rape Squad responds and locates the injured victim. They find that the victim has been humiliated, violated and injured with lacerations. She describes how her hand was cut by the perpetrators' knife, that she scratched the offender on the inside of the thigh, that she saw that he had a tattoo of a swallow on the top of his shoulder and that she bled with her cut hand across his back.

Can we connect the offender to the crime? The investigators identify a suspect, ask him to remove clothing for the purposes of photographing a tattoo, observe the scratches on the inside of his thigh or take a swab of the victim's blood from the middle of his back. The suspect, however, has the right to decline this request. Under current laws in these circumstances, the Victoria Police have no power to gain the vital evidence which corroborates the evidence of the victim. On numerous occasions, over an extended period of time, it has been recommended that police be granted these powers (see Victoria Police 1991, and Victorian Consultative Committee on Police Powers of Investigation 1986).

This Committee recommended that the Police be given the power to conduct tests and physical examinations in order to observe injuries, such as bruises, scratching and distinguishing marks such as tattoos, birth marks and, if appropriate, photograph them, take gunshot residue from external skin surfaces, hair samples, fingernail scrapings, blood samples and mouth swabs.

Proposed legislation in regard to obtaining samples from suspected persons and examination of their person is pending debate before Parliament in the form of the Crimes (Forensic Procedures) Bill 1992 and amendments by the Honourable M.A. Lyster.

One can only conclude that if a police force had these additional powers they could identify the criminal at the earliest possible time, thus protecting society and preventing the commission of further crime.

Conclusion

The police force, as an organisation, and all others involved in the judicial system, have a responsibility to ensure that the system is simple and thorough. A police force has great difficulty in discharging its responsibilities on behalf of the community, without the appropriate authority and support both from the government and the community.

References

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power resolution, which was passed by the United Nations General Assembly on the 11 December, 1985