Prosecutor Assessment of the Value of Physical and Forensic Evidence in Sexual Assault Cases

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Study Background

- Study 1: 2011-2013
  - NIJ funded study examining the impact of forensic evidence on police outcomes (unfounding/arrest)
    - Random sample of cases (N=528) between 2008 and 2010
    - 11 cases (2.1% of sample, 8.5% of arrests) had forensic evidence results prior to the arrest
    - Although arrest typically preceded forensic evidence findings, arrest was associated with higher likelihood of finding semen

- Study 2: 2013 – Present
  - NIJ funded study examining forensic evidence in prosecution of sexual assaults (charging, plea bargaining, conviction)
    - Interviews with prosecutors on the probative value of forensic evidence
    - Data abstraction from prosecutor files to examine what factors predict prosecution, plea bargaining, conviction

Value of Forensic Evidence

- Sexual assault case are difficult to prosecute
  - Rarely have third party witnesses; she said/he said
  - Often lack visible physical injuries

- Potential for forensic evidence in sexual assault cases
  - Objective third party witness
  - Potential for identifying unknown assailants
  - Linking suspects to multiple assaults

- What is unknown
  - When and how forensic evidence is probative
  - How prosecutors evaluate the value of forensic evidence and the impact prosecutor decisions

Qualitative Methods

- Semi-structured interviews with 8 Assistant District Attorneys working in northeastern United States
  - Child/adolescent or adult cases
  - Unit supervisors

- Interview topics:
  1. Cases where injury or forensic evidence was probative/not probative
  2. Factors used to evaluate injury or forensic evidence value and the case overall
  3. Investigation activities particularly useful
  4. Impact of injury/forensic evidence on court outcomes
  5. Impact of medical provider on court outcomes
  6. CSI effect on cases

Value of Biological Evidence

ADA 1: *I would certainly rather have biological evidence than not have biological evidence, but I am, no, not convinced it's not gonna completely knock your case outta the park.*

- Biological evidence can help the case
- Biological evidence has limitations
- Forensic evidence and trial

Biological Evidence Assists the Investigation

- Identify suspects in stranger cases

  ADA 3: [stranger rape of two women] *There was a DNA—there was semen in one of the two kits from which a DNA profile was created. The case really went cold until 2010 when that DNA profile from one victim's kit was matched to a DNA profile left at a scene in [location]. . . . That's one, and DNA solved it, basically.*

- Identify suspects in cases where victim unable to provide good witness

  ADA 4: *she was only 12 years old and she had been through a traumatic event . . . she had trouble talking about the perpetrator and who he was. . . It was saliva that was recovered, I think from her breast, that ultimately had his DNA on it. That took this case from being a very, very challenging case to prove in terms of identity, who actually did this, to pin it down, and made it basically a slam dunk.*

Biological Evidence Assists the Investigation

- Place suspects at the scene of the crime

  ADA 6: *The biological evidence is important because it places him there and it forces him to say he had sex around the alleged incident. It is always good to have DNA no matter what. . . .DNA bolsters the claim of the victim about the sex. DNA and blood at the same spot is good evidence to show that at the time of sex she was bleeding.*

- Can assist in questioning suspects

  ADA 2*: Trying to give him every opportunity to admit he was at least in [location]. When he says he's never been there, they then say, "The reason that we arrested you is your DNA has been linked to a rape kit . . . ." Then once he's confronted with the fact that his DNA is there, now completely predictably, it changes to, "Oh, you know what? I think I was in [location]. . . . .The biological evidence there enabled them to confront him, and him on video and audio recording changing his story as predictably as he did when confronted with the DNA evidence is something . . .*

Biological Evidence Helps Prosecution

- Bolsters victim's credibility

  ADA 4: *. . . .if she says, "He bit my breast," and you've got a bite mark on a breast with saliva that matches the defendant, that's hugely corroborative. Right? It also functions in another way, which is less direct, but important to think about, is the more we can show the victim was accurate about it, the more likely the jury is to accept the biological and the injury evidence for what she says it is.*

Overcoming the Consent Defense

- Consent difficult to overcome

  ADA 2: *It was really strong DNA and fingerprints, and he at first tried to refute, refute, refute the DNA. Then when he couldn't, he then turned to consent in the middle of the trial. His new defense became consent because it's a lot easier to challenge the credibility of a human than it is to challenge the science of DNA or fingerprints.*

  ADA 7: *The suspect denied sexual contact with the victim and his semen was found in the rape kit. The suspect and victim were acquaintances—they generally know each other. It became a he said, she said case, because he explained away his initial denial, saying that he did not initially tell the truth because he is married.*

Challenges to DNA Results

- Challenging the chain of custody or results

  ADA 4: *Really the only thing the defense can do is nibble around the edges and say the chain of custody is cloudy or the testing is unreliable in some crazy way, but really, there's no defense.*

- Alternative explanations for DNA presence

  ADA 5: *This case was a girl claimed her uncle sexually assaulted her and put his mouth on her nipples and raped her, among other things. She got a kit done. They swabbed her nipple. His saliva was found on her nipple . . . He claimed that she's a liar. They got in a fight that day—a physical fight—and he spit on her and it was spit that was on her chest area. . . I mean it just- they always have a—they always explain it away, right?*

Defense sometimes raise questions about DNA to create reasonable doubt

- Questioning reliability of DNA to create reasonable doubt

  ADA 1: [About a case with a hung jury] The defendant, through counsel, got up there and said, "DNA can stay alive for four days. You heard that from the Commonwealth's expert. You heard the Commonwealth's person from the crime lab, say she doesn't know how it got there. She could just say this, that, and the other thing. Nobody, at any time, ever identified my client. The Commonwealth wants you to believe that, just because that's his DNA in there, that he did this." It [this argument] convinced somebody [on the jury].

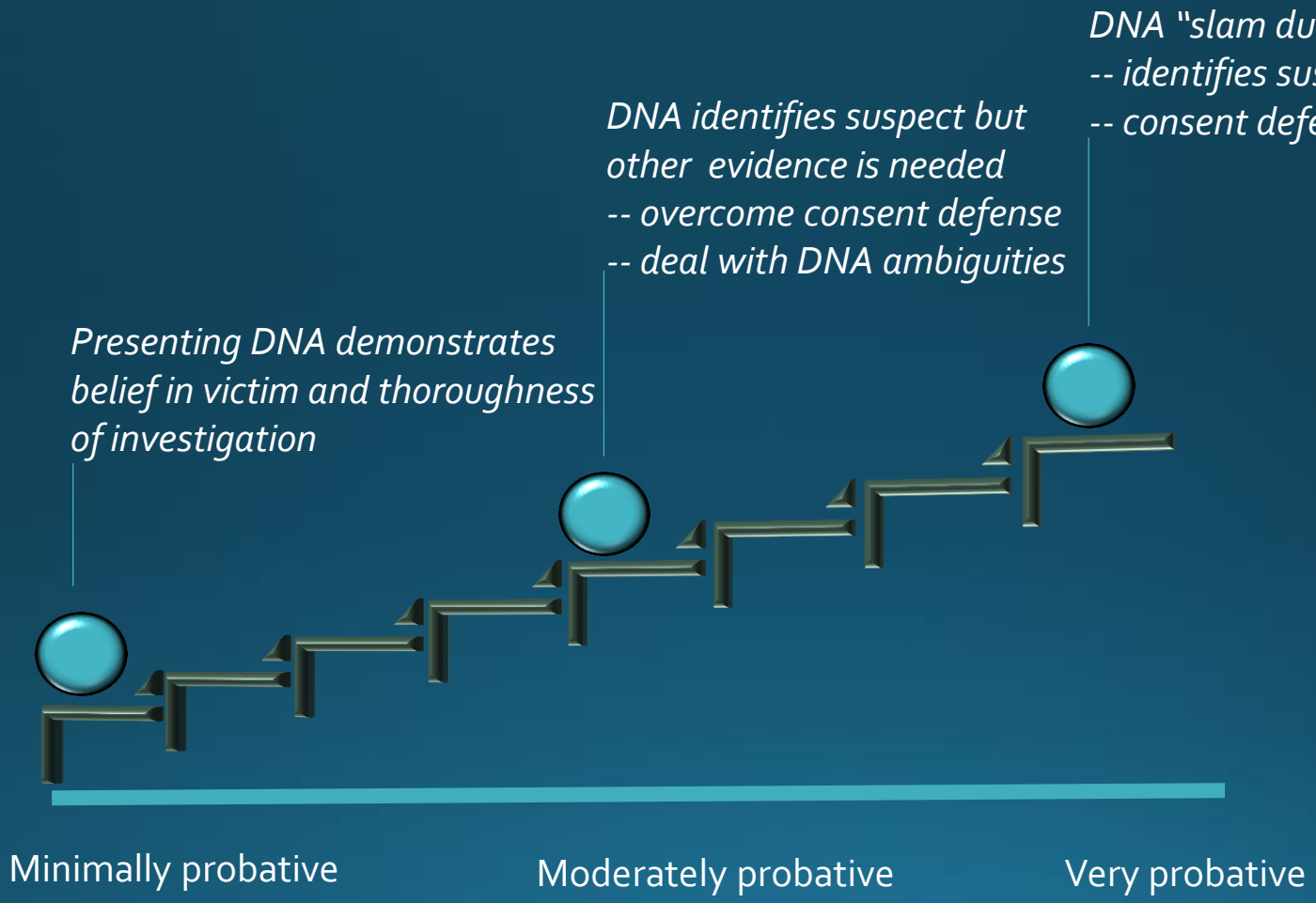
Court Culture and Forensic Evidence

- Forensic evidence presented even if not probative

  ADA 2: *We still have a burden of proving the elements of the crime and the fact that the defendant is the person who committed the crime. . . Under the theory of better to be safe than sorry—we don't do it in the extent that we would in non-consent cases.*

  ADA 4: *When we have the evidence, we use it. When we don't have it, we bring in experts to explain why we don't have it every time, every time.*

Biological Evidence: Continuum of Probative Value



Summary Conclusions

- Biological evidence can be helpful for investigations even if that evidence has less value in court
- DNA evidence can be helpful beyond identification and connecting cases through CODIS
  - Credibility of victim
  - Thoroughness of the investigation/prosecution
- Reliability of DNA evidence is strong, but cannot always overcome a consent defense
- The presentation of biological evidence results or lack thereof has become part of the court culture
- The value of biological and DNA evidence exists on a continuum, and whether the evidence is highly probative or minimally probative is impacted by numerous case-specific factors.

Future Analyses: Five Major Themes

- **Value of biological evidence**
- Value of injury
- Using multiple forms of evidence to construct a case
- Importance of educating jury and presenting evidence
- Value of other system players