Understanding Consent and Victim Dynamics

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Baggage Claim

• We are all raised in a culture that looks at sexual assault through a certain lens
• We tend to hold victims responsible, to some extent, for the crime
• It is important to examine our “baggage” in order to respond to sex crimes professionally and accurately
A snapshot of victims in AF

2010 Survey of Sexual Assault in the U.S. Air Force
2010 Survey: Key Findings: Frequency

- 3.4% of women, 0.5% of men sexually assaulted in past year
- 66% of those assaulted under age 25
- 75% assaulted at home station
- Female victims: 80% assaulted by military perpetrators (92% NOT strangers)
- Lifetime prevalence: 29.7% women; 4.3% men
2010 Survey: Key Findings: Reporting

- 83% of women & 94% of men DID NOT formally report sexual assault

- Why? Many reasons, but:
  - 47.5% did not want superiors to know
  - 43.5% feared being treated badly
  - 45.6% did not want to create trouble
  - 25.3% did not trust reporting process
  - 24.8% feared retaliation
What you can do

• Don’t prejudge cases
• Communicate with victims regularly, keep them informed of the process
• Encourage them to seek support for SA trauma and other complications
• Learn about trauma and how it impacts victims
• Treat them as you would want someone in your own family to be treated
The chasm between words and how they are interpreted
What words are synonymous with “consent”? 
Consent Defined under the new Article 120 effective 6/12

• Consent means a freely given agreement to the conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from the use of force, threat of force, or placing another person in fear does not constitute consent.
Consent Cont’d

• A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue shall not constitute consent.
Consent Cont’d

• A sleeping, unconscious, or incompetent person cannot consent. A person cannot consent to force causing or likely to cause death or grievous bodily harm or to being rendered unconscious. A person cannot consent while under threat or fear or under the circumstances described in subparagraph (C) or (D) of subsection (b)(1).
Consent Cont’d

• Lack of consent may be inferred based on the circumstances of the offense. All the surrounding circumstances are to be considered in determining whether a person gave consent, or whether a person did not resist or ceased to resist only because of another person’s actions.
Seems simple, so why the chasm?
Meet the Unnamed Conspirator
The Unnamed Conspirator

• Subtly influences all of us to see this crime as different
• Pedals double standards
• Creates a rule book for victim behavior
• Influences victims to blame themselves and influences us to blame victims
• Causes us to, subconsciously or consciously, judge whether or not a crime was committed based on VICTIM behavior rather than OFFENDER behavior
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A freely given agreement

• How many people does it take to agree to something?

• Boy, I am thirsty!
• Does our answer change based on the value or perceived value of the thing taken?
• Should it?
The Pen Exercise
Testimony of a victim on re-direct examination at trial

• Question: So, just to clarify again for the jury, at any time that evening did you agree to have sex with the defendant?

• Answer: WE didn’t have sex. HE had sex. I had no choice!
A freely given agreement to the conduct at issue

- Agreeing to X does not allow someone to assume an agreement to X Y and Z unless there is additional, mutual, free communication
Consenting to part
A freely given agreement to the conduct at issue

- Agreeing to NON sexual behavior (like drinking, being alone with the offender) does not equal agreement to sex.
“Consent” means a freely given agreement to the conduct at issue by a competent person.
For our purposes, “competent” means not a child and not impaired by alcohol
Who does the robber choose?
Typical statement by juror

“As soon as she drank with him everything else was consensual”
Even if she didn’t consent, they can’t convict him because SHE made a mistake by walking alone at night.

Were the jurors motivated by fear? What if THEY walked alone at night? Could this happen to THEM?
If sexual assault was a compass, NORTH would be victim behavior.
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An expression of lack of consent through words or conduct

- **WORDS**
  - No
  - Stop
  - I am not sure I want to do this
  - I need to get going
  - I have to work early
  - I don’t like that

- **CONDUCT**
  - Trying to leave
  - Turning one’s head or body away from the sexual gesture
  - Crying
  - Pushing someone off
  - Closing legs together
  - Being passed out

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An expression of lack of consent through *words or conduct* means there is no consent.

What did “no” look like?
What did “no” look like?

• EXERCISE
• Think of a situation in your life OTHER THAN INTERPERSONAL VIOLENCE where you were bullied.
• Complete the following sentences;
  I thought....
  I felt....
  I said....
  I (action)......
Lack of verbal or physical resistance or submission resulting from the accused’s use of force, threat of force, or placing another person in fear does not constitute consent.
Why might a victim not say “no” or physically resist?

• Fear
• Drugs or Alcohol
• Trauma
Trauma is trauma...

• “For 17 years I never understood why I froze during one of my tours of duty. It took this class to help me understand what happened. Thank you.”

• US Army Chief Warrant Officer  7/2012
Counter-intuitive or challenging responses

- Lack of physical resistance, attempts to flee or to summon help
- Difficulty sequencing the event
- Gaps in memory
- Inability to remember important aspects of the event
- Lack of emotion or odd or inappropriate affect
- Delayed report, report via others
- Protecting perpetrator, continuing to have contact with the perpetrator, retractions
- Intentional omissions or embellishments
How victim trauma can affect YOUR investigation

• Victims often have inconsistent memory
  – Trauma registers in senses.
  – Ask about what they heard, smelled, felt etc.
  – Alcohol or drugs may contribute to this

• May be avoidant
  – Anyone in the system is a natural trigger of the rape

• May be hyper vigilant
  – Trying to regain some sense of control

• May be angry with you
  – Don’t personalize it, you are a safe person for them to be angry with!
“Ultimately, this study demonstrates that negative reactions to SA disclosures is strongly predictive of increased psychological symptoms related to trauma”

Lack of verbal or physical resistance or submission resulting from the accused’s use of force, threat of force, or placing another person in fear does not constitute consent.
When fear is in the room consent is not
What if they have had sex before?
• A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue shall not constitute consent.
Vermont case example

• Medical student (offender) meets and has a one time casual sexual encounter with a college freshman. She felt used by him and didn’t want to have anything to do with him after that. One month later he sees her at a fraternity party. He wants to get together for sex, she says no. He follows her outside and tries to convince her it is okay to have sex in the shadows on the front lawn.
• She says no, he starts to use some force. She resists, cries out for help, three witnesses hear her cries and hear him hitting her. They intervene. He stops, pulls his pants up and runs away. She is hysterical, has a split lip and a black eye from his hitting her.

• Case goes to trial
• At trial, the defendant testified “I only slapped her after she became skittish about having sex. She raised her voice; I tried to calm her down and convince her it was alright, but she raised her voice again. I told her to be quiet and I slapped her face”.

• He is acquitted.

• Female juror said told police chief that he had “arrested an innocent man because they had sex before, she was drunk and just looking for sex again”
• A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue shall not constitute consent.
• Wearing “floozie” clothes) does not equal agreement to sex
Can an 11 year old dress like a “floozie”? 
11 year old girl gang raped by 18 men ages 15-27

• A New York Times article quoted Cleveland residents as saying the girl “dressed older than her age, wearing makeup and fashions more appropriate to a woman in her 20s” and asking “what was her mother thinking” by letting her spend time in the Quarters, the same area in which the incident took place.
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Bring the case to life
Make the law keep its promise

• Every man or woman who serves in the military is made a promise that if someone sexually touches or penetrates them without their consent, the AF will do something meaningful in response.

• The military must continue to align appropriate action with this promise to bring the meaning of consent to life.
Thank you!

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