



New Technology and Old Police Work Solve Cold Sex Crimes

By JAMES MARKEY

In 2001, when the court system convicted a serial rapist of multiple sexual assaults in both Arizona and Florida, a new dawn began for his victims. During cross-examination, victim after victim described how their lives had been changed forever. The rapist's life sentence, though, finally gave his victims the chance to return their lives to normalcy. Many victims had experienced dramatic life changes, and they had been waiting months, or even years, for a conviction. The credit for arriving at this point goes first to the victims for surviving and never giving up hope and, second, to the detectives who diligently pursued these cases while employing new technology to uncover the guilty suspect.

The offender's rapes spanned over 20 years, and police speculate that the total number of rapes he committed could register in the hundreds. After confessing to some recent crimes under investigation by the Phoenix, Arizona, Police Department, the rapist also began to describe details of numerous other unsolved crimes still carried by police departments across the country. In essence, these investigations had gone cold, but the Phoenix Police Department began to see an opportunity arising. Could it solve some unsolved crimes by reinvestigating and trying to match known offenders to these unsolved crimes? Realizing that sex crime offenders have expansive careers and analyzing the rapist's span of crimes, the Phoenix

Police Department determined that solving serial sex crimes needed a new formula.

ESTABLISHING A COLD CASE TEAM

Across the United States, hundreds of unsolved sexual assault crimes exist. What happens to the victims of these cases? Many of the victims still may be living in a state of fear or shock. Moreover, nonresolution by police in high-profile cases erodes victims' and the public's confidence in the justice system, and this same nonresolution empowers suspects to believe that they can beat the system. Upon completion of the serial rapist's case, the Phoenix Police Department conducted an internal

audit of its resources and began to ask many questions. How can thousands of victims be better served? How can victims be given new hope and confidence that their cases will remain priorities with local police departments? Within most sex crimes units, detectives' tenures fluctuate, and investigations are worked until all leads are exhausted and have resulted in no suspects. The Phoenix Police Department realized that reopening these cold cases, solving the complex crimes, linking multiple offenses, tapping into new DNA technology, and presenting a resolution to the victims represented department priorities. After all, a component of community-based policing includes solving crimes.

Early in the audit, the department realized that this effort deserved a multidisciplinary team approach. The department's investigation, laboratory, and victim services divisions all combined to form the nucleus of the team. With a strong nucleus assembled, the

department explored outside its doors for additional partners in the effort. Through good public relations and hard work, the department secured grant funding for the program and solidified the strong, existing relationship with the local prosecutor's office. With assembly of the team finished, the first cold case sex crime team devoted specifically to investigating sexual assaults could offer new hope for many sexual assault victims.

DEVELOPING A STRATEGY

The internal audit of the Phoenix Police Department revealed over 1,700 sexual assault examination kits gathering dust while waiting for evaluation and screening. In addition, over 700 new sexual assaults were being reported each year. The first priority of the new cold case team became gaining a genuine commitment from the entire chain of command of the police department. By gaining a commitment and a vow of cooperation from every officer, including the chief,

this goal was reached, allowing investigators to begin research.

After identifying the need for a team effort, the logistics of establishing a team became the priority. In 2000, the department applied for a state of Arizona grant just as it became available. After a review process, the department received the grant, resulting in 18 months of funding for the creation of the Phoenix Cold Case Sex Crime Team.¹

Upon release of the funds, the cold case team began to develop a strategy for success. With the understanding that a program is only as good as the people who run it, a seasoned investigator, with 10 years of experience in sex crime investigations, was chosen to lead the team. A complete understanding of sexual offenses, rapists, and their victims is a key component for the successful investigation of these crimes. With an investigator in place, the team began to enlist other partners to ensure success. The department's laboratory was in the process of obtaining national certification for DNA testing. Knowing that lab results would play a big part in these investigations, the team forged a relationship. However, resources, including personnel, became an issue. The cold case team witnessed an evidence bottleneck occurring in the lab—the limited staff could not handle the dozens of requests for sex kits. Thus, the cold case team decided to transfer the grant-funded position of detective to the lab to hire a new analyst. The lab, in turn, looked for additional funding. The lab located funding in a National Institute of Justice grant that would allow it to outsource kits to private labs for screening.²



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Sergeant Markey serves with the Phoenix, Arizona, Police Department.

DEALING WITH NEGLECTED VICTIMS

The cold case team next wondered how it should approach victims living with unresolved incidents for extended periods of time. Professional advocacy became the logical solution. Funding allowed the department to hire an advocate to deal with the multitude of victimization issues that would arise from these cases. Most victims had left the area, moved their lives forward, or done their best to forget the crime. However, most still were interested in prosecuting and had been wondering what had become of the investigation.

To help reluctant or frightened victims cope with the reopening of a case, the advocates, generally civilian police employees, specialize in victim assistance and crisis intervention. Furthermore, advocates can act as a resource referral for long-term assistance. These advocates help victims over the initial fears and concerns of prosecution, explain the justice system, gain their confidence, and occasionally renew cooperation. Several cold case victims simply are pleased, and most certainly surprised, to find their cold case not forgotten but still an active case.

Two specific hurdles of investigations and prosecutions are deceased and unwilling victims. A basic right of accused individuals is to face their accusers. How should this be addressed with no victim? As

with all obstacles, police departments should work closely with prosecutors to develop a review process that addresses each case on an individual basis. All victims, including those deceased,³ make statements at or around the time of the assault. These statements typically are voiced to police, medical personnel, and, on many occasions, friends. Courts may treat these statements as exceptions to the hearsay rule, and witnesses of these

these cases if the victim wishes to do so. Many times the prosecutor's office will negotiate a strong plea agreement with suspects. This practice satisfies most victims while avoiding harmful court trauma and still holding suspects responsible for their actions.

After establishing the cold case team, Phoenix investigators tackled numerous neglected victim cases, but which, when they turned cold again, were filed without new leads

or suspects. For many victims in the community, resolution never arrived. Taking a step back and assessing the entire situation, investigators used the theory, typical rapists commit multiple attacks during their careers, to their advantage. By deciphering "old" cases, investigators

began to see patterns in "new" cases. Linking these crimes can enhance prosecution, produce longer sentences and more plea agreements, and instill a community belief that the police continue to work and solve difficult, high-profile cases.

INVESTIGATING "NEW" CASES

The cold case sex crime team conferred with the department's existing cold case homicide squad and adopted its successful tactics, resulting in a unique database for organizing and tracking unsolved cases. All cases were reviewed and evaluated for solvability based on

Statistical Recap of the Cold Case Team

As of June 2003, the cold case sex crime team reviewed in excess of 1,000 cases dating back to the 1960s. The team identified 31 suspects with DNA evidence or another method of forensic or trace evidence and cleared 58 cases (charged, submitted for prosecution, or used as an aid in prosecution).

statements may be able to testify to them in court. Combining these statements with corroborating evidence collected at the crime scene has proven successful at combating the issue of deceased victims.

On the other hand, many victims simply do not want to pursue their case any further. Victims have blocked it out, moved on, or may just not want to relive the trauma. Ultimately, this is the victim's decision. The Phoenix Police Department respects this decision, offers as much assistance to the victim as possible, and believes other police departments should follow suit. The department also believes in avoiding court proceedings with

a set of criteria. These criteria included the reevaluation of all evidence (still in property), initial victim interviews, and all witness interviews. Investigators also deliberated the possibility of linking cases through offender behavior, method of operation, and signature.

Reevaluating Evidence

When reevaluating physical and biological evidence in these cases, investigators noted the evolution of DNA technology in the last 5 years. The cold case squad quickly learned that sex kits evaluated as recently as the early 1990s needed retesting for biological evidence based upon advances in DNA technology. With new methods and more refined testing, many cases relinquished previously unbound evidence with the use of new DNA technology.

Identifying Suspects with DNA

As with all investigations, identifying the unknown suspect ranks

as the first priority. After identifying the suspect, the focus shifts to locating the newly identified suspect. In many cases, a DNA hit from the Combined DNA Index System (CODIS) database from a cold case results in a second investigation into a suspect's current location. Not only must investigators locate and apprehend the suspect but they also must obtain a new DNA sample to confirm the original cold hit. DNA databases provide investigators with new leads in these cases, but these new leads mean starting some investigations all over again.

Recently, CODIS and other local DNA databases have begun to expand the amount of profile information investigators can access. The comparative abilities of these DNA information systems continue to evolve and improve almost on a daily basis. Each week, these DNA information systems compare more unsolved cases to known offenders than the previous

week. These databases have two distinct sections. The first is built on blood samples contributed by convicted offenders.⁴ The second section originates from DNA evidence collected, profiled, and submitted by law enforcement agencies from unsolved crimes. Even though the amount of information continues to expand, law enforcement has a long way to go in this area. As an example, a U.S. Department of Justice study in 1999 showed that of 746,962 suspect (offender) blood samples, only 362,987 have been DNA profiled, analyzed, and entered into CODIS. While waiting for comparison to unsolved crimes, unrecorded offender profiles lie dormant. Unfortunately, in the real world, personnel, multiple priority cases, and other internal factors have an impact on how and when these databases are able to fulfill their investigative potential.

The Phoenix Police Department discovered that many cold case DNA hits stem from crime scene evidence (generally biological) submitted by other law enforcement agencies on their own unknown or unsolved cases. These DNA cold case hits can help revive investigations. For example, a department may have a case go cold, with no identified suspect; however, it may find, through DNA evidence, its investigation linked with another department's unsolved case. These two agencies then could communicate and share information, helping to keep their respective investigations alive.

What happens, though, when DNA matches a known suspect?

Remedy to Statute of Limitations

Statutes of limitations also become investigative hurdles and concerns for investigators. The Phoenix Police Department recently reopened one cold case from 1994 when a DNA cold case hit from a suspect in federal custody was identified. The state of Arizona statute of limitations was 7 years for the offense under investigation. This limited the investigators' response time to file charges to a few weeks. Fortunately, the relationship with the Maricopa County Attorney's Office put the investigators in a position to file charges prior to the time limit. In August 2001, as a remedy to such problems, the Arizona legislature removed the statute of limitations for sexual assault.

Questions begin arising, such as “Is the suspect incarcerated?” “Is the suspect out of custody, roaming in another jurisdiction?” and “Is the suspect’s exact location known?” The Phoenix cold case team discovered few procedural or investigative guidelines to answer these questions. The cold case team also recognized that once a cold case hit identifies a suspect in a DNA database, the investigating agency must determine when, where, and how investigators took the original blood sample from the suspect. Chain of custody of the original blood sample can become a huge impediment for investigators. Most prosecuting attorneys concur that a second, fresh sample of the suspect’s blood is required. Analyzing this second sample confirms the initial database cold hit and ensures a clean chain of custody for future prosecution.

The Phoenix cold case team discovered that with multiple jurisdictions involved, legal issues addressing warrant and court orders for suspects’ blood samples become substantial investigative and prosecutorial concerns. Again, interagency communication and cooperation become paramount. Regardless of suspects’ current location, investigators must remain aware of the local jurisdictional laws and follow them to avoid investigative errors. The key to successful prosecution is minimizing or eliminating investigative errors that may aid the defense. Even though a quick and thorough prosecution remains one of the goals of any investigation, the Phoenix Police Department has

DNA Success

One example of a cold case success involved a 68-year-old female who was approached by a suspect in her bedroom. The suspect robbed and sexually assaulted her. The suspect fled the area and was never identified. In January 2000, detectives on the Phoenix Cold Case Sex Crime Team reviewed this case and reexamined the sexual assault kit for biological evidence. Prior tests of the kit revealed no DNA, but with new, more refined testing, DNA presented itself. Detectives submitted this evidence to CODIS, resulting in a nationwide search. They received a hit indicating that the suspect was in custody in Alabama on unrelated charges. Detectives flew to Alabama and interviewed the suspect who admitted his involvement. In March 2002, authorities convicted the suspect of sexual assault and kidnapping.

found that identification in a cold case simply means the *start* of a second investigation. However, the second investigation gives victims new hope and strengthens police departments’ connections with their communities.

CONCLUSION

Establishing a means for using cold sex crime cases to supplement current investigations constituted a creative vision that has become a monumental success for the Phoenix Police Department. Clearly, the success of any new police crime-fighting initiative is based on a multidisciplinary approach. Technology, old-fashioned police work, victim advocacy, and interagency cooperation need to work in harmony to produce positive results. All team members must be committed to their particular role, to their profession, and, most of all, to the victim. Police administrative leadership must understand

and realize the importance of such programs, not only within the department but also within the entire community. If the public and victims lose their hope and their confidence, the community will follow suit. Police departments hold the future of victims and communities in their hands, and how police departments across the United States approach high-profile crimes, especially sex crimes, will map the future of community life. ♦

Endnotes

¹ This grant has been renewed for 2003.

² For 2003, the federal government has earmarked additional grant funding for equipment and testing related to the backlog of DNA evidence. All agencies across the United States should apply for funding because many programs, if described correctly, are eligible for assistance.

³ These are mainly elderly victims who have passed away from causes unrelated to the rape.

⁴ State laws are in place as to who must provide blood samples for entry into CODIS (e.g. convicted sex offenders).