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COMPLAINT-FILING INTERVIEWS AND THE CONSTITUTION OF ORGANIZATIONAL STRUCTURE: UNDERSTANDING THE LIMITATIONS OF RAPE REFORM

Lisa Frohmann*

During the last twenty-five years, legal agents, legislatures and feminist activists have engaged in an ongoing effort to reform rape law. These changes include shifts in corroboration requirements, changes in the definition of rape and the parallel penalty structure, the elimination of, or change in, resistance requirements, and the institution of rape shield legislation. The goals of the reforms were to increase the reporting, prosecution, and conviction of rape cases while limiting the “second assault” (i.e., mistreatment of victims by the legal system and related institutions) experienced by victims. The data on instrumental reforms such as changes in reporting, prosecution, and conviction rates, are mixed.

I want to thank the women and men of the District Attorney’s office who allowed me into their lives to do this research. I am grateful to Nancy A. Matthews, Gregory M. Matoesian, Mindie Lazarus-Black, and Matthew Lippman for their many conversations, readings, and unlimited support.


3. For an analyses of rape law reform, see SPOHN & HORNEY, supra note 2; MARSH ET AL., supra note 2; M. A. Largen, Rape Reform Law: An Analysis, in SEXUAL ASSAULT II (A.W. Burgess ed., 1988); Susan Caringella-McDonald, The Comparability in Sexual As-

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Spohn and Horney studied the impact of rape reforms in six jurisdictions: Philadelphia, Detroit, Atlanta, Chicago, Houston, and Washington D.C. They found change in adjudication rates in only two jurisdictions: Houston had a slight increase in reporting and decrease in indictments; and Detroit showed increases in rape reports and indictments. As for the impact of rape law reform on women's experiences in the system, the majority of evaluation studies ignore the victim's interpretation of her experience. What is available, although not conclusive, suggests women's experiences have improved with the passage of rape shield laws.

Explanations for the limited effects of reform vary. One set of explanations focuses on the constraints of the law-making process, which suggest that if the laws were better, the reforms would be more effective. For example, Berger et al. argue that the laws were diluted because feminists had to make compromises to work with law enforcement officials and non-feminist political groups that comprised the majority of coalition members. Another set of explanations analyzed the work of legal practitioners. Spohn and Horney state that the limited instrumental effects of reform result from the gap between statutory change and actual courtroom practices. Statutory reforms, they suggest, do not affect the courtroom workgroup and the norms of case processing activity. Spohn and Horney do not, however, empirically validate this hypothesis. A third explanation is offered by Matoesian. He argues that a key to rape reform is trial talk, yet activists and researchers have systematically ignored the features of trial talk in understanding the workings of rape reform. Matoesian suggests that language, as shaped by the legal rules of evidence, courtroom systems of domination, and patriarchy, constrain the possibilities for drastic change. He argues that to understand how patriarchal domination is maintained in the face of reform, we need to analyze language use in trials.

The majority of research on the success of rape law reform examines changes between pre- and post-reform arrest rates, complaint filings, con-
viction rates, and sentence length. Research has allotted little attention to the organizational culture within which attorneys frame their decisions. Martin and Powell, in their analysis of legal agents' responsiveness to victims, found that institutional frameworks shape agents' interaction patterns. They argue that organizational concerns such as building cases, arresting suspects, verifying evidence, and discrediting victims' accounts preoccupy legal agents. Legal agents' orientation toward institutional concerns causes them to be unresponsive to victims' needs. Similarly, my work on prosecutorial case filing decisions suggests that decision-making practices shape and are shaped by prosecutors' practical tasks, concerns, and organizational agendas, such as their concern with case convictability and efficient case processing. The organizational structure and logic of the prosecutor's office can have a chilling effect on efforts of instrumental reform by maintaining a normative structure and incentive system that inhibits the number and type of cases brought into the court system. I argue in this article that if we want to understand the limitations of rape reform and identify methods of meaningful change we must understand the relationship between organizational logic and structure and prosecutors' practices throughout the process. If we want to increase the number of reportings and prosecutions, we need to understand the organizational logic and structure that shapes those interactions, and in turn, victims' experiences.

This paper fills an empirical gap by analyzing the actual workings of prosecutors before courtroom interaction. This study focuses on prosecutor-victim complaint filing interviews. I examine this interaction for two reasons. First, case filing is a critical stage in case prosecution. Here, prosecutors determine which cases will be forwarded for adjudication by the courts. In the jurisdiction observed, prosecutors were required to interview the victims of sexual assault complaints before making an official decision to file or reject a case. The first encounter between the prosecutor and the victim is important because it shapes the victim's first impressions of the court system and the prosecutor's first impressions of the victim as a credible woman.

10. See generally Spohn & Horney, supra note 2; Marsh et al., supra note 2; Largen, supra note 3; Caringella-McDonald, supra note 3; Polk, supra note 3; Loh, supra note 3; Bachman & Paternoster, supra note 3.
11. See Martin & Powell, supra note 1.
13. A similar assumption was made in changes to police procedures for battering and police front line decision-making. See Kathleen Ferraro, The Legal Response to Women Battering in the U.S., in WOMEN, POLICING, AND MALE VIOLENCE 155 (Jalna Hamner, et al. eds., 1989); Kathleen Ferraro, Policing Women Battering, 36 SOC. PROBS. 61 (1989), suggesting that changing rules without changing organizational culture does not alter police decision-making. Rather, police decisions subvert or disregard reforms.
Second, I analyze prosecutors' interviews to identify the practices that constitute organizational structure. The practical concerns, tasks, rules and norms of the organization, and the shared assumptions, reasoning, and implications that are developed in institutional interactions are all embedded in talk.14 Talk is a fundamental form of social interaction in institutional settings. Talk and organizational structure are reflexively related. As action, talk constitutes the organizational structure. At the same time, the structure is the medium for the talk-in-interaction.15 Recognizing the reflexive nature of talk and organizational structure suggests that if we want to understand the overall effectiveness of legal reform, we need to examine legal agents' practices in the early processing of sexual assault cases and their orientations to the organizational structures in which this occurs. Through an analysis of prosecutors' interview techniques, the logic of their work and the organizational structure that shapes that work become visible. Once revealed, we can use this knowledge to analyze the types of organizational change that would be necessary to facilitate reform. I suggest possible change in the conclusion.16

Before proceeding with the analysis of a typical interview, I will briefly discuss how the data was gathered and the analytic methods employed. This will be followed by an overview of the case screening process and the organizational logic of prosecutors' decision-making activity. I will then return to the interview.

Data and Method

This research is drawn from a larger ethnographic field study on the prosecution of sexual assault crimes by deputy district attorneys (DDA) in special sexual assault units.17 The data for this study was collected through participant observation and interviews with prosecutors. Participant observation involved an eighteen-month immersion in the sexual assault units of

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16. This research is based on ethnographic field research. The analysis and conclusions emerge from the data. Observations, analysis, and conclusions not footnoted are grounded in the author's research. The data for these analyses and conclusions is on file with the author.

17. To protect the confidentiality of the people and places studied, pseudonyms are used throughout the article.
two branch offices of the District Attorney's office in a major metropolitan area on the West Coast; direct observations of prosecutors' activities and interactions with victims and legal agents; formal interviews with the eight prosecutors in the units; and ongoing informal discussions with prosecutors, detectives, judges, public defenders, and victims. During this time I observed 71 case screenings, (and for the purposes of anonymity, I am omitting the precise dates and locations of these interviews). The analyses presented in this article are drawn from one victim interview. The cases are drawn primarily from one community, whose residents are primarily poor African-Americans and Latinos. According to police, there is heavy gang and drug activity in this community.

I focus on one interview to illustrate and identify holistically how the tasks, concerns, identities, norms and shared assumptions shape prosecutors' interviews and reveal their orientations to specific organizational structures. The interview chosen is typical in structure and content to other interviews in which the prosecutor is anticipating case filing. It is the first meeting between the DDA and the victim. The DDA has tentatively decided to file the case. The prosecutor directs the interaction. He asks very detailed questions, methodically exploring events leading up to the incident, the unfolding of the incident, and the interactions after the incident. The DDA's questions address the victim's ability to identify the perpetrators, if there is/was a prior social relations between the perpetrator(s) and the victim, the sex acts that occurred during the assault, the victim's behavior before, during and after the assault, and the availability of witnesses. The prosecutor is concerned with establishing a relationship with the victim, identifying potential defense arguments, assessing the victim's moral character and her ability to be a good witness, and determining whether the case will result in a conviction.

This interview differs from others only in its larger number of suspects. It should be noted that the number of assailants did not change the types of questions asked or the prosecutor's organizational methods.

18. I use the term "victim" rather than "survivor" throughout the article in keeping with the ethnographic practice of honoring members' (e.g., prosecutors') language.
19. In situations where the prosecutor is considering rejecting the case the elements are similar, but the purpose and structure of the interview are different. In this case, the prosecutor must explain the decision to the victim and handle the victim's reaction. The primary technique for doing this is trying to get the victim to decide "on her own" that she does not want to file. In these situations the prosecutor asks the victim to recount what happened. The questions they ask cover the same topics as filing interviews, but they are framed in a more generalized and open-ended manner. Often the focus of the DDA's questions are oriented toward showing the victim how potentially difficult and embarrassing it can be to take a case to trial—motivating her to decide not to file. For a discussion of how prosecutor's manage victims during complaint filing interviews, see Lisa Frohmann, Managing Victims: Prosecutor's Rhetorical Strategies for Producing Victim Cooperation During Sexual Assault Complaint Filing (1997) (unpublished manuscript on file with author).
The methodological approach I employed in this study can be characterized as "constitutive ethnography." A central premise of constitutive ethnography is the ethnomethodological principle that social structures and social facts are interactional accomplishments. In line with this premise, I analyzed the interactional work and discourse through which prosecutors arrive at their decisions.

I began my work with the ethnographic concern of comprehending how decisions were made, and how prosecutors understood the work they were doing. As the research progressed, I narrowed my focus to how participants accounted for, explained, and described their decisions to one another. The ethnographic fieldwork provided me with background knowledge to understand prosecutors' talk. I analyzed my data using the constant comparison method of grounded theory. Through the continuous interplay of data and analysis, interviews were systematically analyzed for patterns, inconsistencies, and contradictions. Substantive and analytic categories were developed through this process. The frequency with which a category emerges suggests the accuracy of the analysis and the validity of the findings.

The Case Screening Process and the Complaint Filing Interview

Case screening is the pivotal point when prosecutors decide whether complaints will continue to adjudication in the courts. In this jurisdiction, prosecutors must interview victims in sexual assault cases prior to case filing, unlike other felony crimes. This unique feature of sexual assault cases is primarily intended to assess a victim's credibility. According to prosecutors, this policy is a response to jurors who scrutinize rape victims' credibil-

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22. The methods employed in this research contribute to the body of work that demonstrates the importance of ethnographic methods for the work of ethnomethodologists and conversational analysts. See MEHAN, supra note 14; HOLSTEIN, supra note 20; Miller, supra note 14; J. William Spencer, Mutual Relevance of Ethnography and Discourse, 23 J. CONTEMP. ETHNOGRAPHY 267 (1994); Aaron V. Cicorel, The Interpenetration of Communicative Context: Examples from Medical Encounters, 50 SOC. PSYCHOL. Q. 217 (1987).
23. The grounded theory method stresses development of theory grounded in data that is systematically collected and analyzed. Theory evolves from actual research. It does not employ logical deductive reasoning based on existing theoretical frameworks to understand phenomenon. BARNEY GLASER & ANSELM STRAUSS, THE DISCOVERY OF GROUNDED THEORY (1967); Kathy Charmaz, The Grounded Theory Method: An Explication and Interpretation, in CONTEMPORARY FIELD RESEARCH (Robert M. Emerson ed., 1983).
ity more than victims of other one-on-one crimes. It also provides prosecutors with an opportunity to "fill in" or "correct" the police report. This may be necessary because patrol officers, unaware of which elements are critical to conviction, do not always reflect what actually occurred in their reports. Additionally, victims will not always tell the police everything that happened, either because they do not know what is important or because they are in shock. Interviewing also provides an opportunity to establish rapport with the victim, to assess the strength of the victim, and to determine what kind of witness the victim will make.

The organizational purpose of complaint filing is to winnow out cases that are unlikely to result in conviction. Thus, prosecutors' filing decisions are future oriented. They are organized around securing a guilty verdict at trial. As a result, when prosecutors make filing decisions they anticipate how jurors and judges will interpret case facts. To make these assessments, prosecutors must determine whether they can construct a credible legal account of sexual assault. This involves identifying and collecting evidence, identifying defense arguments and possible responses, assessing the victim's moral character and ability to perform as a witness, and assessing the victim's willingness to follow-through. These are prospective oriented tasks and concerns.

The prosecutor's immediate task is to charge the suspect. To charge the suspect, the prosecutor has to identify all actions and interactions that fit into a category of the criminal code and assess whether or not he or she can substantiate the charges. As noted above, prosecutors approach interviews after making tentative filing decisions. The questions are detailed according to whether the deputy wants to persuade or dissuade the victim from prosecuting. Although I have distinguished these according to temporal order, the process of attending to these issues is actually dynamic and reflexive. For example, when charging a suspect (immediate concern), prosecutors consider the implications of different charging categories for a potential plea bargaining (future concern), i.e., which charges could be dropped and still reasonably punish the defendant, or when the crime comprises different

24. Interview with Deputy District Attorney (June 14 & 19, 1991).
26. Id.
27. Id.
29. See supra note 16.
30. Id.
31. See generally Discrediting, supra note 12.
charges (immediate concern), which charge has the longest sentence (future concern).\(^{32}\) On the opposite side, when prosecutors collect information for trial (future concern) they may discover inconsistencies in a victim’s account. If they perceive these inconsistencies as indicators that the case is not worth prosecuting (immediate concern), the case will be rejected. Case filing is a gestalt process -- the elements of the case are examined, and the tasks are accomplished in relation to one another.

The Organizational Logic of Prosecutors’ Prospective Orientation

A prosecutor’s prospective orientation, particularly his or her concern with filing only convictable cases (i.e., those cases likely to get a conviction at trial), is shaped by the organizational policies and procedures of the prosecutors’ office and the courts. In particular, the temptation to take risks (i.e., to file cases that might not result in a conviction) is tempered in four ways. First, prosecutors are given credit for the number of cases they reject as recognition of their commitment to the organizational concern of reducing prosecutorial and judicial case loads in an already overcrowded court system.\(^{33}\) Second, a pattern of not-guilty verdicts is used by the District Attorney’s office as a measure of prosecutorial incompetency.\(^{34}\) Third, judges may question a prosecutor’s competency as a member of the court if the prosecutor continually pursues cases that should have been rejected outright.\(^{35}\) Fourth, branch offices are ranked by the percentage of convictions they receive.\(^{36}\) The higher the percentage, the more legitimacy the head deputy has to request additional resources and person power. Thus, all members of the office benefit from a high conviction rate.

The pressures not to take risky cases in this state are enhanced in sexual assault cases because these cases are among a group of crimes that have been given priority status by the state legislature.\(^{37}\) That is, in instances where both “sex” and “non-sex” cases are trailing (waiting for a court to open), sexual assault cases are given priority for court time. Judges and other attorneys become annoyed when they feel court time is being wasted and witnesses and victims are inconvenienced because of cases that should have been negotiated or rejected in the first place.\(^{38}\)

Procedurally, the prosecutor’s office handles sexual assault crimes differently than other felony crimes. Unlike other felony crimes which are

\(^{32}\) See supra note 16.
\(^{33}\) Discrediting, supra note 12, at 215; Hard Cases, supra note 12, at 191-93.
\(^{34}\) Id.
\(^{35}\) Id.
\(^{36}\) Id.
\(^{37}\) The state of California enacted Prop. 8, the Victim’s Bill of Rights.. CAL. CONST., art. I, § 28(d) (enacted by public referendum of June, 1982).
\(^{38}\) Discrediting, supra note 12, at 215; Hard Cases, supra note 12, at 191-93.
handled by a system of referral (i.e., handed from one DDA to another at each stage of the prosecution of the cases), sexual assault cases in this jurisdiction are vertically prosecuted -- the deputy who files the case works on it until its disposition. 39 Mather 40 and Frohmann 41 suggest that prosecutors who try the cases they file have an incentive to adhere to stricter filing standards than those who will not try their own cases.

The Interview

This section contains an extended interview with a victim in a case the prosecutor anticipated filing. I offer the interview in detail in order to show how it unfolds through the question and answer sequence between the DDA and the victim. I have annotated the text of the interview to point out the tasks that prosecutors gravitate toward when interviewing the victim. This reveals the DDAs' orientation to organizational structures (i.e., norms, assumptions, identities, and concerns) in interactions and the importance of these structures in shaping interviews.

The annotation of the interview is intended to assist the reader in recognizing the reflexivity of talk-in-interaction, prosecutor's tasks, and organizational structure. To indicate the layers of tasks, colons are used between prosecutor's practices.

The case involves a sixteen-year-old woman who alleges she was serially raped by several gang members. The victim is the girlfriend of one of the gang members (who was not present at the assault). She says she is not a "gang banger" (gang member) herself. The victim and suspects are all black. The legal agents are white.

The interview occurs in the prosecutor's office. The DDA, the detective, the victim and I are present. The victim has been previously told by the detective that she needs to talk with the prosecutor before a decision can be made about filing the case. The interview format is asymmetrical, with the prosecutor controlling the topics and floor by taking the role of the question initiator, leaving for the victim the role of the respondent. When the victim does take the role of the questioner, it is only at the invitation of the prosecutor. 42 The interview is framed through these situated identities as prosecutor and victim. That is, the participants have preconceived notions of the structure of the interaction and their roles in it. Orienting toward these roles shapes the interaction. 43 The prosecutor begins the interview with the open-

39. Id.
40. MATHER, supra note 28.
41. See generally Hard Cases, supra note 12.
43. Asymmetry is a common feature of professional-client interactions. For an overview of examples in different settings, see TALK AT WORK, supra note 14.
ended question, "Do you have any questions before we start?"

Starting with an open-ended question serves many purposes. It provides the victim an opportunity to become comfortable speaking in the interview setting. It gives the victim a sense of control and is a way for the prosecutor to express concern for the victim by making space for her voice while getting a glimpse of the victim's concerns about the incident and case processing. It eases the victim into the conversation, so as not to invade her privacy too quickly. The opening question sets up the victim's first impressions of the interview process and the relationship between herself and the prosecutor. This is important to keep the victim in the system as an essential witness if the prosecution is to go forward. The general context of the interview, i.e., that this is a complaint filing interview, provides the boundaries for what the DDA judges as appropriate responses; the victim's answers should be focused on details related to the rape and case processing. In this instance, the victim uses the opportunity to express her fear and describe the harassment she has been experiencing from girls in the gang.

**INTERVIEW TEXT**

DDA KENT FERRIS: Do you have any questions before we start?

MONICA: The girls that stay over on Taper. They are all calling my house. Calling my house and DeAnn's house and threatening her. Jack's house was shot up and they say I got the guys to do it. I wasn't even home. The girls say they are going to come up to my school and wait outside of the gate for me. I told my mom that they won't come because the school is gang related. The school they go to is Parkview. Mom doesn't want to give me a weapon but I need to defend myself.

DDA: Do you know who these people are that are threatening you? Have they told you not to testify? If you know where they live we can go arrest one or two of them. Then they'll know

**TASKS**

Keep victim in the system: Developing a relationship with victim as protector.

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45. Interview with victim (Feb. 22, 1990).
we won’t tolerate threatening you.

V: Janine is only 14 and she has been in jail four times. She hangs out with people who steal cars. I’m starting to think Janine set me up, they are all in the same gang. She knows what they are capable of doing. She talked to me one time and asked me why I put the wrong guys in jail. She threatened DeAnn saying she was going to shoot her and her grandmother. Also threatened to shoot me and DeAnn. These people are playing on my phone.

DDA: Who are the girls who are calling you?

V: Janine, LaTisha. Janine said to tell the Judge that Michael and Earl Johnson didn’t rape me.

DDA: If anyone threatens you, you call Detective Berry and we’ll go out and arrest them. Don’t feel like you have to handle this yourself.

V: A lot of people are starting to find out about this. My girlfriend said it is all around Center Heights Junior High School. Janine is terrified of my sister. She is 5’11” and 160 lbs. My sister protects me.

DDA: Don’t worry about the press telling anyone. They can’t say your name because you are a juvenile. There was a little press in the beginning because of the arrest of nine gang members but there hasn’t been any since and your name wasn’t mentioned in the article. Are you ready to tell me what happened? Let’s go back to the party and talk about it. Do you remember when it was? 45

As the DDA listens, he asks questions about what was said to the victim and suggests how law enforcement might respond. I observed that the interviewer’s questions are shaped by the criminal code and the practical concern of keeping the victim in the system. 46 We learn from Monica that the girls in the gang accused her of organizing a drive-by shooting, harassed her over the phone, threatened to beat her up outside school, and threatened her life and that of a girlfriend. The DDA focuses specifically on any threats

46. See supra note 16.
made against Monica regarding her future testimony. Since it is illegal to interfere with a person’s testimony by threats or intimidation, the DDA has the leverage to intervene and have the girls arrested. 47

A related concern mentioned by the victim is the spread of gossip about the rape. Prosecutors cannot control or prevent the spread of gossip but know the pressure it can bring, especially for teenagers. The prosecutor addresses the aspect of the issue he can handle, gossip generated from press releases disseminated by the DA’s office. 48 He does this by assuring the victim that the coverage has been minimal since the case was first filed, and that the DA’s office did not release her name. The prosecutor’s response signals a disjuncture between the victim’s and prosecutor’s worlds.

Throughout this question and answer sequence the DDA constructs a relationship as the victim’s protector. Asserting himself as protector is important for two reasons. First, in Center Heights, legal agents typically are not viewed as protectors, but as harassers. 49 Thus the DDA is trying to renegotiate the relationship between law enforcement representatives and the victim in hope of creating a relationship based more on trust than on intimidation and force. Having a protector may help the victim feel safer. Crafting the relationship as protector-victim, however, creates an asymmetrical power relationship between the parties. Second, one of a prosecutor’s main concerns in a rape case is victim follow-through. 50 The victim’s fear is a signal to the DDA that she might not follow-through with the prosecution. To increase her likelihood of pursuing prosecution, the DDA’s task is to alleviate her fear of intimidation and retaliation. 51

**INTERVIEW TEXT**

**MONICA:** It was before Christmas, December 19, a Tuesday.

**DDA KENT FERRIS:** How did you get to the party?

**V:** KC, Clipper and DeAnn drove me there. I went to Janine’s house (where party

**TASKS**

*Constructing a credible account.*

*Anticipating defense argument.*

*Constructing a


48. See supra note 16.

49. Id.


51. Victim harassment such as threats and pressure to drop charges by assailant or his social network is a common phenomenon. Holmstrom & Burgess, supra note 50, at 122-25.
was) earlier with Clipper and Buddy. Then I left with Cracker and Clipper. We went to pick up DeAnn and went to the movies.

DDA: KC and DeAnn are boyfriend and girlfriend. So were you double dating?

V: Kind of.

DDA: What time did you get out of the movies?

V: We got out around 9:30 and went back to the party.

DDA: Are Clipper and Buddy also Parkview [gang name]?

V: Yes.

The first set of questions begins to establish the prior social relationships between the parties, the time frame of the evening, and the gang affiliation of the assailants and victim. Establishing the prior social relationship is important for identifying potential defense arguments and for developing a credible account. When interpreting the interactions, prosecutors and jurors use patriarchal social structures as resources for making sense of the relationship. They draw on the patriarchal logic of heterosexual relations to assess the likelihood that the victim consented. Framing the prior social relationship provides the boundaries of acceptable social behavior, setting up the realm of possibilities for rape to occur. When Monica accepts the characterization of KC and DeAnne’s relationship as boyfriend and girlfriend and their outing as a “double date,” it provides an opening to suggest that Monica and Clipper were sexually and romantically interested in one another, opening the possibility of consent. The way in which the victim arrived at the party also reflects the prior social relationships between the parties and her future motivation for accepting a ride home with the perpetrators. In developing a credible reason why Monica accepted a ride home from her future assailants, the prosecutor can suggest that her prior experi-

52. Interview with victim (Feb. 22, 1990).
53. The prior social relationship is a critical factor in prosecutors’ decisions to file cases. Prosecutors tend to stay away from acquaintance cases because they are more difficult to prove. This issue has been a location of activism both in broadening the definition of rape to include marital rape and with pressuring the prosecutors office to file more acquaintance cases. For discussion of the effects of prior social relationship on how legal agents interpret and respond to rape victims, see Holmstrom & Burgess, supra note 50; Kristen M. Williams, Few Convictions in Rape Cases: Empirical Evidence Concerning Some Alternative Explanations, in Institute for Law and Social Research (1981); Susan Estrich, Real Rape (1987); Gary D. LaFree, Rape and Criminal Justice: The Social Construction of Sexual Assault (1989); Kerstetter, supra note 50. See Matoesian, supra note 15 for a detailed description of how patriarchal and legal modes of domination interact to discredit victim’s accounts in rape trials. See also Carol Smart, Feminism and the Power of the Law (1989).
ence with these men gave her no reason to fear them. In the past they had neither hurt nor intimidated her, and therefore there was no reason to anticipate trouble. This refutes a consent argument and is pursued by the DDA later. Identifying when the assailants arrived at the party is important for charging the incident and the alibis of the alleged assailants. 54

The fact that the victim's assailants are gang members may be consequential for charging purposes. I am under the impression that prosecutors can add a special allegation to a charge if the suspect is a gang member. It may signal to the DDA that he will have to construct evidence to prove the assailants are gang members for trial. The question of gang activity involves moral character. 55

The DDA will additionally have to address that the victim is a gang member's girlfriend. Gang involvement is also a matter of moral character for victims. 56 The DDA will have to assemble evidence to argue that she is not actually in the gang and that she is different from other girls who are. Earlier we saw how this evidence could be constructed when the prosecutor wanted to prevent the victim from using street solutions to solve her problems. Using socially sanctioned methods of problem solving positions the victim on a different moral plane. In addition, gang involvement provides background knowledge which the prosecutor will use to interpret what happened and inform the anticipated defense strategy. It is a common practice in black gangs that if a woman is dating a gang member she is "jumped in" by other members. As DDA Jim Burn explained: "She is property of the gang, not just of that one gang member. So, if she's dating one other guy, she's got to sleep with them all and that's well known in the community." 57

Next, the DDA inquires about what was going on at the party, specifically whether anyone was drinking or taking drugs. Again, the initial question is open-ended and non-accusatory. Non-accusatory questions create an open and non-hostile interaction between the DDA and the victim. This helps shape their relationship. It is followed up by specific questions about the party and the victim's behavior.

**INTERVIEW TEXT**

**DDA KENT FERRIS:** What was going on at the party?

**MONICA:** The guys were playing UNO, the girls were watching TV.

**TASKS**

*Charging: Special allegation for gang membership.*

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54. See supra note 16.
55. Id.
56. Id.
57. Interview with Jim Burn, Deputy District Attorney (Feb. 26, 1990).
58. Interview with victim (Feb. 22, 1990).
DDA: Was it pretty much a Parkview party?
V: Yes. It was for Rhonda. She was from Parkview and just turned 20.
DDA: Was anyone drinking beer?
V: They were drinking outside in the backyard. Janine’s mother wouldn’t allow it in the house. By the time I got there Janine was gone, she was real bad.
DDA: Were you drinking?
V: No. And I’m not sure who was drinking outside.
DDA: This is going to come up. I’m going to ask you this because the Defense will ask you and I don’t want to be caught off guard. Was anyone doing any drugs? Was anyone smoking any rock?
V: No.58

In this exchange, the DDA warns Monica against lying to him about drugs and alcohol, and makes it clear he does not want to be caught off guard about this, or any other aspect of the incident. This type of warning is a standard part of interview process.59 It reminds victims of the gravity of their testimony and of the importance of fully disclosing the events that happened. This, in turn, implies a contract between the victim and DDA that the DDA will be able to perform to his highest potential provided that the victim is completely honest. Prosecutors interpret victims’ holding out on important factors such as drug use, gang membership, and prior relationships with parties involved in the assault as indicative of their discredibility.60 DDAs report that if certain information is disclosed for the first time at trial, the victim’s credibility can be undermined in the eyes of the jury because it appears the prosecution was trying to hide something.61 Again, this “contract” creates and reinforces an asymmetrical power relationship between the DDA and the victim. In order for the victim to get access to legal remedies, she must follow the rules. This is part of the victim’s socialization into the legal system.

Monica tells the DDA that although she was not drinking, others were, particularly Janine, the woman whom she thinks is the ringleader of the girls who are harassing her. It is commonly understood amongst DDAs that drinking and drug use are likely to be used by the defense to challenge the

59. See supra note 16.
60. Id.
61. Id.
victim’s moral character and consent. The difference in alcohol use can be used to contrast the moral characters of the female gang members and the victim. The victim’s legal identity as a “real” victim is reflexively constituted through the question and answer sequences that follow. The details offered by the victim suggest she was not drunk or high. Her “real” victim status is not contaminated by drugs or alcohol. We also learn that the party was a Parkview event. This tells the DDA that the victim is friends with and is accepted by the Parkview gang, whether or not she is a member. This raises the question regarding the victim’s moral character. It also addresses the relationship between gang affiliation and charging decisions.

The next series of questions continues to probe into the prior social relationship between the victim and her assailants and moves into the unfolding of the incident. In my observations, the typical defense in acquaintance cases is consent. In this exchange, several details are elicited that will be used to counter a possible consent defense. Specifically, the DDA tries to determine why the victim got into the car with her future assailants. Again, the DDA begins with an open-ended question, taking his direction, in part, from the information the victim imparts.

**INTERVIEW TEXT**

DDA KENT FERRIS: What happened after you got inside?

MONICA: There was a fight around the corner, so we all went to see what was happening.

DDA: Who was fighting?

V: Some girls were arguing about somebody’s boyfriend. So I came back to the house and started picking up the trash in the backyard. KC took DeAnn home. Clipper left with Michael and went to Jack-in-the-Box.

DDA: How many blocks do you live from there?

V: I live five houses in on 156th street. [She describes the direction to her house from Janine’s house.] I’m still cleaning up and Clipper didn’t come back because he was tired.

**TASKS**

Anticipating defense arguments.

Constructing a credible account: Establishing non-consent: Victim’s motivation for accepting ride home.

Constructing a credible account: Establishing the PSR.

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62. Id.

63. The victim’s use of drugs or alcohol is often used to degrade her moral character. LaFree, supra note 50, at 598-99; Holmstrom & Burgess, supra note 50, at 144, 183-86; Frohmann, Discrediting, supra note 12, at 217-18; Susan Meyers Chandler & Martha Torney, The Decision and the Processing of Rape Victims Through the Criminal Justice System, 4 Cal. Soc. 155, 162, 166 (1981).

64. See supra note 16.
found this out the next day. I asked Janine to ask Buddy if he would take me home because I knew him. He said he couldn't so he asked Mark to do it. I knew Mark also.

DDA: Would you say you knew people at the party pretty well, very well?
V: I knew everyone there, I know all the boys from school.

DDA: Who was in the car when you got in?
V: Mark was driving, the front passenger was Johnny Morrow, Ray Jeffers was sitting behind Mark and I was sitting behind the front passenger. It was Buddy’s car. It is a 2-door Buick Cadillac. It was a big American car.

DDA: Was it Buddy’s car?
V: No, a guy asked Buddy to keep it while he was in jail. Mark, Charlie, Ray Jeffers were talking before they got into the car. I don’t think Buddy knew what was going on. The guys that were talking are the ones that came over to the motel. We were driving down the street, I asked where we were going because I noticed we were going in the wrong direction.

DDA: Did you tell them how to get to your house?
V: No, Mark knew where I stayed. I asked where we were going. We passed the Golden Eagle. I thought we were going in a big circle. I asked why we were here. The passenger said he lived there. I know people who live in motels, so I didn’t think much of it. Ray Jeffers was making small talk about the party.

Determining the victim’s motivation for getting into the car is important to counteract the potential defense argument of consent. Monica reiterates that her motivation for entering the car was to get a ride home because her preplanned ride did not return. When left with no ride, she asked a friend to assist her in securing a ride home with friends. The prosecutor can defend Monica’s moral character by explaining that Janine arranged her ride home.65 It suggests that she is a responsible woman who was left without a

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66. Accepting rides from “strangers” and hitchhiking are viewed as inappropriate be-
ride by no fault of her own. She accepts a ride with people she knew from school and the party. These people are friends of a woman she trusted. She did not violate a common safety rule by taking a ride from “strangers.” Inferring the victim’s culpability for her rape from accepting a ride with strangers is part of a reasoning process Matoesian calls “patriarchal logic-in-action—patriarchal standards of sexuality and sexual access” which legitimize male normative standards of sexuality as social fact. Through the power of patriarchal-logic-in-action, interpretations of particular interactions are perceived as consensual sex and not rape. Patriarchal logic works as follows: There are a set of category bound behaviors within which a woman is expected to live. A disjuncture occurs if her behavior diverges from these categories. The presence of a disjuncture indicates the woman has violated the boundaries of acceptable behavior and therefore is not worthy of “real” victim status. Establishing her “sensible behavior” is part of constituting her legal identity as a “real” victim.

Anticipating a defense argument that the boys did not know where she lived, the DDA in the present case asks if the victim gave them directions. The victim explains she did not need to because they already knew where she lived. This question marks the time when the victim became “concerned” about why she was not being driven directly home. She explains why her fear, which began when they did not take her home, was momentarily alleviated when she was told that the Passenger lived at the motel. Living in motels is common in Center Heights. Identifying the point at which the victim becomes suspicious and scared allows the prosecutor to show that the victim’s behavior changed from this time on, indicating that although she accepted a ride home, she did not consent to sex. There is no reason for the victim to panic and try to leave until she becomes scared or suspicious.

In the next sequence, the DDA begins with a specific question trying to get information on the victim’s state of mind to bolster the rape argument.

**INTERVIEW TEXT**

DDA KENT FERRIS: What did you think when they pulled up to the motel and they got out?

**TASKS**


69. See Matoesian, supra note 15, at 104; DOROTHY E. SMITH, TEXTS, FACTS AND FEMININITY 34-48 (1990), for a detailed analysis of how this process works.

70. See supra note 16.

71. Id.

72. Interview with victim (Feb. 22, 1990).
out of the car?

MONICA: Mark jumped out. I asked what we were doing here. That’s when the passenger said he lived there.

DDA: Mark goes into the office to register. How long was Mark gone?

V: About three minutes.

DDA: Did he say anything when he got back?

V: No, he pulled up to a parking space. Mark and the passenger got out and went to the phone. I thought Mark was calling his girlfriend.

DDA: Were you pretty nervous at all?

V: No, I thought everything was ok. I talked to Jeffers about the party. (Janine introduced me to him at the party. She was introducing me to everyone.)

DDA: What happened when Mark and the passenger came back?

V: The passenger came to my door. He had a brown glove on. He opened the door and pulled the seat back. He said “do you want to get out on your own or do you want me to pull you out?” I said “who you talking to.” He grabbed me by the coat and shirt and Jeffers pushed me out because I wrapped my hand around the seat belt. The door to the room was already opened. Jeffers had me by the mouth and had my arm in back of me and said “just go in and don’t say nothing” Mark turned up the TV real loud. I asked “why don’t you take me home?” The passenger said “do you want to take off your clothes or do you want me to take them off for you?” I said “no” and the passenger pushed me on the bed. Mark came on my right side and took my hand and twisted it. Ray Jeffers had the other hand and was taking my rings off. I had started to cry. They said to be quiet, shut up. I couldn’t scream because Jeffers said if I do “I’ll kill you” and I knew he had a gun because when the police passed by he said “glad they didn’t stop me because I have my gun.”

DDA: Did he show it to you?
V: Not until we got into the room. The passenger pushed me on the bed and started taking off my shoes and clothing. I was trying to move, but I couldn't because Mark had my arm.

DDA: Were you crying? Were you incredibly scared at this point?
V: (Nods head yes)

DDA: When did you see the gun?
V: Fifteen minutes after we were there. I was still crying and I started to get loud. The passenger raped me and Jeffers pulled out the gun, put it to my head and said "Be quiet or do you want to die. Just shut up."

DDA: Did you try and stop crying then?
V: I tried but I couldn't stop.\footnote{72}

These questions address the concerns of constructing a credible account, countering the defense allegations of consent, and charging the suspects. The details offered by the victim provide a vivid description of the escalation of her fear. This gives the DDA a glimpse of the type of witness she will make, and her ability to involve a jury in the account.\footnote{73} The victim’s account takes us through the escalation of threats, intimidation and force upon her.

The prosecutor’s questions are aimed at narrowing down the time when the victim became fearful.\footnote{74} He asks if she was incredibly scared, and when she first saw the gun. Her inability to stop crying, even when threatened, can be used to indicate her level of fear. The presence of a gun significantly strengthens the argument that she did not consent. It also explains that she stopped protesting and resisting because she feared for her life. Although resistance is not required by law as a criterion to prove rape, juries still believe that limited or no resistance is an indication of consent especially in acquaintance cases.\footnote{75} Fear and resistance are elements that constitute the victim’s status as “real.” The continued search for evidence of resistance is rooted in the cultural myths about rape. This is another example of where patriarchal structures of domination merge with legal rules of case prosecution to define rape through men’s sexual experience.\footnote{76}
Having established that the victim was fearful, forced to enter the room and to undress, the DDA turns to what sex acts occurred. This portion of the interview provides the DDA with the information necessary to charge the suspects. The DDA begins this portion of the interview with the open-ended question “so tell me what they were doing.” The victim’s response, typical of the rape victims I observed, was to become nervous; her response was ambiguous but typical of how teenagers talk about sex in their everyday lives. The DDA asks for a more specific description in order to better determine who to charge.

**INTERVIEW TEXT**

**DDA KENT FERRIS:** Tell me what they were doing.

**MONICA:** (She smiles, laughs nervously, squiggles) He had sex with me.

**DDA:** What do you mean by that?

**V:** The passenger put his penis inside my vagina.

**DDA:** While Simon was raping you what were the other guys doing? Were they all in the room?

**V:** As far as I knew.

**DDA:** Did they ever try and put anything over your face?

**V:** No, but Jeffers got a towel from the bathroom and put it over my face. Mark asked why he was doing that and he said to keep me cool.

In the process of asking about the specifics of the sex acts, the prosecutor shifts the paradigm of the interaction from the defense argument of consensual sex, to his argument of rape. The DDA translates the phrase “had sex with me” to “raping you.” Using this language suggests a commitment by the prosecutor to file the case. If he were not to file, he might have continued to use the victim’s non-legal language.

The prosecutor then asks a series of questions about whether anything was placed over the victim’s face. This question is directed at the victim’s

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**TASKS**

Charging the suspects: Identifying the criminal acts committed.

Charging the suspects: Identifying the suspects.

Constructing a credible account.

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*and Motivations, in Rape and Society: Readings on the Problem of Sexual Assault* 16 (Patricia Searles & Ronald J. Berger eds., 1995); *Diana Scully, Understanding Sexual Violence* (1990).

77. See supra note 16.
78. Id.
79. Interview with victim (Feb. 22, 1990).
80. Id.
81. See supra note 16.
ability to identify her assailants. It addresses the tasks of charging the correct suspects with the crimes and constructing a credible account for the judge and jury. Suspect identification is important for several reasons. First, the DDA must show at the preliminary hearing that the victim can identify the suspects correctly. This justifies holding the suspects over for trial. Second, the DDA has to be able to counter the possible defense argument that the wrong person is accused. Third, to charge the suspects with acts in concert, the DDA has to establish who was there and what they were doing. The DDA returns to this issue in more depth later on.

Documentation is an important resource for prosecutors. Turning to the police report, the prosecutor asks very specific questions about bruises she may have received during the incident. In the following section, we see how the DDA reduces the victim’s description of events to a summary of legally relevant concerns: victim’s resistance and assailants’ threats.

**INTERVIEW TEXT**

DDA KENT FERRIS: (Looking at the police report) Did anybody hit you before the other guys came.

MONICA: Jeffers and Mark hit me. When they took my rings they were squashing my fingers. I tried to scratch him while he was twisting my arms.

DDA: Did you hit any of them?

V: No.

The prosecutor uses the victim’s previous reporting of bruises to the police to focus his interview questions. Bruises can be constructed as evidence of non-consent by signaling the victim was coerced and that she resisted. This is another example of a point of convergence between patriarchal structures and case construction. The logic of heterosexual relations equates physical indicators of resistance to the non-consent of violence.

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82. *Id.*
84. See supra note 16.
85. Interview with victim (Feb. 22, 1990).
86. Prosecutors use police reports and other forms of documentation to check a victim’s credibility. Consistency between the victim’s current and previous accounts is interpreted as an indicator of credibility. If the accounts are inconsistent the prosecutors will either fill in or correct previous accounts creating a solid legal record or use this as evidence of discreditability. Correcting the account will assist the DDA in thwarting defense attacks on the victim’s creditability based on inconsistent accounts of the incident during trial. *Discrediting, supra* note 12, at 216.
87. See supra note 16.
making resistance necessary for constructing a credible account. 88

The victim's description of what happened to her is very specific and personal; she will make a good witness. The DDA's questions regarding whether the victim hit any of her assailants addresses the degree and type of resistance she offered. In addition, if the victim hit an assailant, he might have a bruise, which could be used as evidence of the victim's struggle. These questions substantiate the victim's claim of rape. Questions about the gun are also important to the legal construction of a rape account. The practical concern about whether the victim will be a credible witness is interwoven with these legal concerns. 89

As the DDA continues, he returns to a series of questions related to charging the suspects. He is concerned with the victim's ability to correctly identify the perpetrators and evidence collection. Again, the questions are very direct and specific.

INTERVIEW TEXT
DDA KENT FERRIS: About how long did the passenger rape you?
MONICA: Five minutes.
DDA: Did he ejaculate or have on a condom?
V: No.
DDA: Who raped you next?
V: Ray Jeffers.
DDA: Did Jeffers ejaculate the first time?
V: No.
DDA: How long did it last?
V: Five minutes.
DDA: Who came after that?
V: Mark.
DDA: Did he ejaculate?
V: No.
DDA: How long did it last?
V: Five minutes.
DDA: Did he have his clothes off?
V: Just his pant, shoes and underwear.
DDA: What happened next?
V: That's when everybody started coming.

TASKS
Charging suspects:
Identifying who did what when.
Constructing a credible account: Constructing evidence.

Establishing a credible account: Constructing a time frame for events.

Constructing a credible account:
Charging suspects:
Identifying suspects.

89. See supra note 16. For discussion of a "good" witness, see HOLMSTROM & BURGESS, supra note 50, at 142-44.
90. Interview with victim (Feb. 22, 1990).
About five or six people.

DDA: Did you know any of them?
V: Charlie, Smack, JK, Michael, Earl Johnson—that's it. Then after they raped me, they left, then some guy named Frank came in.

DDA: Were the first three boys still in there?
V: Yes.

DDA: What happened next?
V: The passenger raped me again. Then Smack, Charlie and I don't know who else after Charlie.

DDA: Did anybody say anything to you while this was going on?
V: No. 90

The DDA's questions are designed to efficiently elicit the information needed. The structure and rhythm of the DDA's questions create a powerful iteration device, reminding the listener of the sheer volume and terror of the event.

The DDA's litany of questions reveals the victim's ability to recall the details of an interaction that involved several assailants. This is important to her credibility and her ability to be a good witness. The focus of the DDA's inquiry also clarifies the translation of the victim's rape experience into a legal account on two dimensions. First is the victim's description of the rape incident. When victims recount rape experiences to friends or family they usually do not include how long each act took and whether each person ejaculated. 91 Notice that the victim did not voluntarily give these details but was asked about them specifically. These issues are important for rebutting potential defense arguments, identifying and collecting evidence, and constructing a credible account. If the suspect ejaculates, there may be semen either in the vaginal cavity or perhaps on a piece of clothing. Semen can be tested for blood type and then used to identify, or to narrow down, the identity of the assailants. 92

Even though the present case involves acquaintances, identity is an issue because the suspects covered the victim's face, providing an opportunity for the defense to argue wrong identity. If the suspects were wearing condoms, this could account for the absence of semen.

The DDA asks how long each individual raped. This helps to determine the overall time frame during which the incident took place. Time frames

91. This statement is based on my research observations, my experiences as a rape hotline counselor, and friendships with women who have been raped.
92. See supra note 16.
are another potential weak point in an account. The account becomes vulnerable if the defense can argue that what the suspects are charged with is not possible in the time frame offered. It further acts as a subtle test of the victim's reliability as a witness. In my observations, if the victim appears disoriented about time, her credibility can be eroded on the witness stand.\footnote{Id.}

The second dimension involves the translation of the victim's localized, personal language to more generalized, abstract legal categories. This element is not evident in the dialogue between the victim and the DDA, but is part of the prosecutor's written institutional record. One example of this is the charging categories used to characterize the event. The transformation of everyday accounts into case records is a common phenomenon in bureaucratic work. Records are produced to account to others the interactions that occurred with the background expectancies of how the documents will be used and interpreted in the future.\footnote{See generally \textit{Garfinkel}, supra note 21; \textit{Cicourel}, supra note 21; Dorothy E. Smith, \textit{Textually Mediated Social Organization}, 36 \textit{Int'l. J. Soc.} 59 (1984); Robert M. Emerson \& Blair Paley, \textit{Organizational Horizons and Complaint Filing in the Uses of Discretion} 231-249 (K. Hawkins ed., 1992); Robert M., Emerson, \textit{Holistic Effects in Social Control Decision Making}, \textit{Law \& Soc'y Rev.} 17, 425-55.} Dorothy Smith writes of this process as the "continual transcription of the local and particular activities of our lives into abstracted and generalized forms."\footnote{Smith, supra note 94.}

The next set of questions inquires whether the victim was required to perform any other sex acts. These questions are directed at charging the suspects, an imposition of legal categories on "what happened." In California, each sex act is counted as a separate charge under the sexual assault statutes.\footnote{Rhoden \textit{v.} Rowland, 10 F.3d 1457, 1461 (9th Cir. 1993).} At this point we see the victim's emerging confusion about who committed which acts.

\textit{INTERVIEW TEXT}

DDA KENT FERRIS: Did you have to do any other kind of sex acts with any of them?

MONICA: With Mark. I'm not sure who raped me after Charlie, I think it was JK. I can't tell because they all raped me and then raped me again.

DDA: I understand you can't keep it all straight, it is ok. Did you name all the boys names who had sex with you?

V: Yes.

JOHN BERRY: Did Mark make you do something else?

\textit{TASKS}

\begin{itemize}
  \item \textit{Charging suspects:}
  \item \textit{Identifying sex acts.}
\end{itemize}
V: Yes, oral sex.97

The victim acknowledges she is confused about when each assailant violated her because all the assailants raped her several times. The ability to recount accurately and consistently what happened is used by prosecutors as an indicator of credibility. In this situation, allowing the victim leeway in describing what happened indicates that accuracy is contextualized within a given rape scenario. Given the number of people who assaulted her, confusion is “understandable” and “accountable.”98 To lessen the confusion, the DDA tries another approach to specify and clarify how many times each person raped the victim. What emerges is a more abridged version of the list created in the previous sequence of questions—information that will better enable the DDA to charge the suspects.

INTERVIEW TEXT

DDA KENT FERRIS: Do you think you know how many times each person had sex with you?

MONICA: Yes.

DDA: Mark?

V: Three times.

DDA: Passenger?

V: Two times.

DDA: Jeffers?

V: Three times.

DDA: Smack?

V: Three times.

DDA: Charlie?

V: Two times.

DDA: Michael?

V: One time.

DDA: JK?

V: One time.

DDA: Johnson?

V: One time.99

Here we have the continued translation of the account of what happened into an abstracted list of suspects and the number of sex acts they committed. This technique of simplifying the interaction decontextualizes the actions from the incident while removing the victim's subjectivity. This ex-

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98. Discrediting, supra note 12, at 216.
change rehearses a possible question and answer trial sequence that accen-
tuates the brutality of the rape by employing this iteration device.
The next sequence of questions returns to the issue of the victim’s ability to
identify the suspects and the fear she experienced. It addresses the DDA’s
concerns with establishing a credible account and refuting anticipated de-
fense arguments. The DDA asks for details of when the towel covered her
face. Several of his questions are direct queries into the victim’s ability to
identify the suspects. He leads her into this sequence with an open-ended
question about a specific person’s activities. Towards the end of this se-
quence, the victim’s account relates the ongoing fear she experienced during
the incident.

INTERVIEW TEXT

DDA KENT FERRIS: Tell me what happens
when Frank comes in.
MONICA: Mark and Jeffers put on their
clothes. Frank comes in. I asked if I could go to
the bathroom. They said yes. I went and came
back in the room. They told me to put the towel
on my face because they didn’t want me to see
who they were.

DDA: When did the towel come out?
V: First time Smack raped me. Jeffers put it
there, it was wet.

DDA: Is that part of the reason you don’t
know who raped you next?
V: Yes. I could see under the towel, I’d look
when I could and they’d say to put the towel
back on my face.

DDA: Is there any doubt in your mind that
these guys were there?
V: No.

DDA: You saw all of them at some point in
time?
V: Yes.

DDA: Were you able to see the guys’ face
that raped you at least once?
V: Yes.

DDA: Did you see Mark’s face each time or
are you estimating?
V: Each time.

DDA: What happens next?

TASKS

Constructing a credible account: Re-
futing defense argu-
ments: Identity issue.

Charging suspects:
Identifying suspects.

Constructing a
credible account: Con-
structing non-consent:
Victim’s post-rape be-
behavior
V: I sat on the bed and took the towel off my face. Frank and Mark and Jeffers were talking. The passenger left with somebody else. Frank comes along only Mark and Jeffers were in the room.

DDA: What happens while they were talking?

V: Frank rapes me. I could hear them say “should we beat her or kill her?” Mark said “I should stay here, we’ll be right back.” They were gone about 25 minutes. When they came back Buddy came. I thought they were right outside the door so I didn’t do anything. They said to stay there and if I moved they’d kill me. Buddy knocked on the door. The TV was still loud and I didn’t answer. He knocked again and when I didn’t answer he busted in. He said “What happened to you? What happened to you? Put your clothes on (I was still crying) and come on.” He put me in the car and took me to a phone. He asked me “Do you want me to tell my mother? I came and got you because I let Clipper use my car. These guys told me what they did to you.” You wouldn’t think this stuff could happen to you until it does.

The logic of the DDA’s questions about the towel relates to the charging of the suspects, responding to defense arguments, and constructing a solid legal account for trial. From the prosecutor’s point of view, the placement of the towel is critical for legitimizing the victim’s identification of the suspects. Also, the suspects’ use of a towel to prevent their identification suggests the assailants knew they were doing something wrong. The towel evidence raises doubt about the victim’s ability to correctly identify her assailants.

The victim’s description of her actions after the perpetrators left marks the transition from talking about the unfolding of the incident to talking about what happened afterwards. Focusing on the victim’s post-incident behavior is important because legal agents and jurors use the victim’s behavior to establish whether she was raped or consented. Prosecutors anticipate jurors have typifications of post sexual assault behavior that are drawn from

101. See supra note 16.
102. Id.
103. Id.
patriarchal ideology. They make comparisons between these typifications and the victim’s actual behavior to assess her credibility. If there is a conflict, it is a cue for prosecutors that potential jurors will discredit the victim’s account.104

Remaining in the room after the assailants leave could be a potential conflict for jurors because they would expect the victim to flee at any opportunity. The victim’s description of the perpetrators’ use of intimidation and threats provides evidence as to why she did not try and flee the scene. Terrorized rape victims often do not flee at points that outside observers perceive as opportunities to escape. This phenomenon is known as “frozen fright” and is a symptom of rape trauma syndrome.105 The victim’s responses indicate her actions were consistent with post-rape victim behavior, constructing the legal identity of the victim as “real.”

The DDA’s focus on post-incident behavior also gives him a chance to confirm the details in the police report and continue to establish a protective relationship with the victim.106

**INTERVIEW TEXT**

DDA KENT FERRIS: What did Clipper say? [Clipper is her boyfriend.]

MONICA: This is the second time one of Clipper’s girlfriends was raped. He went to jail cuz his homeboys told on him, they squealed on him. They rape girls. This is like a habit. Some people have a cocaine and alcohol addiction, these guys have a rape habit. Clipper says he doesn’t know why this happened to me. They did the same thing to an old girlfriend of his at Rhonda’s house. The guys came over and did the same thing to her. The next morning Clipper brought my rings back. Michael and Charlie told Clipper “we raped your girlfriend.” They told him detail by detail.

DDA: Is he pissed?

V: He’s stupid. I wrote him a letter and thanked him for my rings and said I never want to talk to him. He’s with the same people all the time and they do the same thing to him.

105. Gail Abarbanol, Expert Witness of Rape Trauma Syndrome, Court Testimony, Santa Monica CA, 1989.
106. See supra note 16.
Just think about what they do to him. His friends are in the background. He says don’t tell on the homeboys or they will go to jail. I asked a friend what would you do if they did this to your girlfriend. I’d shoot them, I’d kill them. Clipper said he has been talking to people. My friend said forget talking, I’d kill them. My mama doesn’t want me to talk to anyone no more.

DDA: What happened when you got home?

V: Buddy waited until I turned the porch light on. My mama asked “Who is it?” like she is mad. She hates when I’m late. I just started crying and screaming. I told her I was raped. She started crying and my grandmother started crying. My mama called the police. They came. But since it didn’t happen in Compton they couldn’t do anything. One cop said Smack—he’s got arrested five time for rape. His girlfriend has two kids and is pregnant with his kid. His girlfriend called and said why am I doing this to him? “I trust him, he said he didn’t do nothing.” I said she must not be doing something right if he’s got to rape girls.

DDA: I know you want to kill these guys. But let the sheriff do it. I don’t want you getting in trouble.107

The victim’s behavior when she enters the house is consistent with what prosecutors consider a typical post-rape reaction—she is crying and screaming. The immediate reporting of the incident by her mother is also consistent with expectations.108 Both of these actions will be fashioned by prosecutors as evidence of the legitimacy of the victim’s complaint.109

The DDA’s questions about how her boyfriend (Clipper) reacted to the rape draws on his knowledge about how gang members’ girlfriends are often treated within the gang, like they are community property.110 He is looking for any indication that her boyfriend organized the incident which suggests

108. Immediate reporting is one of the indicators prosecutors and police use to establish the credibility of a rape complaint. Discrediting, supra note 12, at 219-20; LaFree, supra note 50, at 73, 97; Kerstetter, supra note 50, at 284; Rose & Randall, supra note 66, at 27.
109. See supra note 16.
110. Interview with Jim Burn, Deputy District Attorney (Feb. 26, 1990).
his potential involvement for charging purposes and the motivation behind
the acts.111 The victim's earlier theory that Janine organized the rape was
not picked up by the DDA. The question is framed in a more open-ended
construction, allowing the victim more flexibility in answering.

The victim's comments about how she handled her boyfriend's actions
indicates her maturity (wrote a letter saying thank you for rings) and her
levelheadedness (I don't ever want to see you again). In addition, her
mother's insistence that she not associate with these people anymore is evi-
dence she comes from a caring family. This adds another layer to the con-
struction of the victim's moral character.

The DDA uses the opportunity of the victim's rage to extend his sympa-
thy and reinforce a protector relationship between the victim and himself.
He warns her not to vent her anger in any way that might get her in trouble
and urges her to let the sheriff take care of the problems. He also issues
this warning to try and ensure the victim's future cooperation by offering her
protection.

The next set of questions reflects the DDA's concern with evidence col-
lection and constructing a credible account. It also offers another example
of the schism between legal concerns and the victim's perception of her ex-
perience.

**INTERVIEW TEXT**

**DDA KENT FERRIS:** Did you have sex
within 72 hours before the rape?

**MONICA:** No.

**DDA:** Have you had sex with anyone before
this?

**V:** Yes.

**DDA:** Any of these guys?

**V:** No.112

**INTERVIEW TEXT**

**DDA KENT FERRIS:** Did you have sex
within 72 hours before the rape?

**MONICA:** No.

**DDA:** Have you had sex with anyone before
this?

**V:** Yes.

**DDA:** Any of these guys?

**V:** No.112

The prosecutor’s focus on prior sexual contact is related to the identifi-
cation of the assailants and evidence collection. Sperm can live up to 72
hours in the female body. The DDA needs to know whether any nonsus-
spects' sperm could have been present when the medical tests were taken.113
If the victim had sex within that time, any and all partners might have to be
involved in the trial to explain who was identified by the medical tests.114
This information is also important in anticipating defense strategy. The de-

111. See supra note 16.
112. Interview with victim (Feb. 22, 1990).
113. See supra note 16.
114. Id.
fense often uses this information as an avenue for commenting on a woman’s moral character by implying that if she did have sexual relations with other people, she is a “loose” woman. The importance of this information for the DDA exemplifies the distance between what the victim considers part of the experience and the components of the legal account the DDA is constructing. In my capacity as a sociologist, I have found that rape victims typically want to separate love making from the rape experience. Here the DDA is mixing the two.

The DDA then begins to socialize the victim to the legal process by explaining aspects of the system and anticipated defense arguments. He provides the victim with a road map that explains the logic of his questions and his thoughts on approaching the case. By clarifying the process the DDA is increasing the likelihood she will continue with the prosecution. This reveals the prosecutor’s prospective orientation.

INTERVIEW TEXT

DDA KENT FERRIS: We can anticipate their defense. They will say you went to the hotel consensually to have sex with one of them and it got out of hand.

MONICA: That is what Janine is saying now. And they say I was drunk.

The next series of questions ties up loose ends in regard to the incident itself and begins to address his downstream concern of the victim’s psychological well-being. Expressing concern for her well-being is part of developing trust between the DDA and the victim. When the victim trusts the DDA she is more likely to follow through with case prosecution. The victim’s response indicates a level of unwillingness to deal with the experience.

INTERVIEW TEXT

DDA KENT FERRIS: Have you been to therapy or do you want to go?

MONICA: No, I don’t want to dwell on it. Put it behind me.

JOHN BERRY: We have a victim-witness coordinator. Give you her number in case you or your mom want to go talk to any-

TASKS

Keeping victim in the system: Constructing relationship as concerned professional.

115. Id.
116. Id.
117. Konradi, supra note 44, at 42.
118. Interview with victim (Feb. 22, 1990).
119. Konradi, supra note 44, at 56.
120. Interview with victim (Feb. 22, 1990).
one.

V: My mama thinks I should talk to someone because I am acting too ok about it.

IO: Can you think how long the whole thing took?


IO: Do you remember the room number?

V: 21 or 22.

DDA: How do you know they rented the room for two hours?

V: Mark said “We got the room for two hours, so you might as well go on and get used to it.”

The DDA checks again on the time frame of the event, room number, and the relationship between the time frame and renting the motel room. The next exchange relates to the victim’s post-incident behavior and her association with this gang. This relates to his concern with constituting the victim as moral and her account as credible. As before, his question and warning to stay away from the gang is rooted in the comparison between common-sense behavior and the victim’s actual behavior. Rape is a horrific traumatizing experience. Common sense suggests a victim would not want to associate with her assailants. If she was associating with them, it would undercut her account. He also inquires again about whether her fear was related to their association with the gang. This returns to the charging task.

INTERVIEW TEXT

DDA KENT FERRIS: Have you seen any of these guys since then?

MONICA: Michael passed by my house three times.

DDA: Did it enter into your fear at all that they were gang bangers?

V: Yes. 121

This aspect of their identities may or may not have been particularly salient to the victim, but to the prosecutor it is organizationally and legally relevant. The DDA can use the victim’s increased fear of the assailants as

121. Id.
gang members as evidence for the charge enhancement. The success of this argument depends on the DDA’s ability to create a distinction between the victim and other gang members.

In the closing segments of the interview, the DDA continues to socialize the victim into the system by briefly explaining the upcoming process and advising her on how to be a good witness. By providing this information, the DDA also attempts to insure the victim’s continued cooperation by mitigating fear of the unknown.  

INTERVIEW TEXT

DDA KENT FERRIS: [Tells her what is going to happen at the preliminary hearing.] The defense will ask you some questions. Some of them might seem crazy or make you mad. Try to keep your explanations short. Very important. If anyone asks you a question and you don’t understand it, say “I don’t understand.” You’ve seen LA Law. If I object or they object to a question don’t answer it until you see what the judge says. Most important thing is to tell the truth as best as you can remember it.

As the interview ends, DDA Ferris reiterates the importance of going to counseling and not hanging out with gang bangers. He reminds Monica that it is a long time between the preliminary hearing and trial and suggests she can keep notes to assist her in remembering “what happened.” The DDA walks Monica to the waiting room where her mother is sitting. He introduces himself and me to the mother and tells her about the victim/witness coordinator. Then Monica and her mother leave.

Conclusion

Although recognized as a potential site for inhibiting reform, pretrial settings are a neglected area of study in rape reform evaluation research. This article begins to fill this gap by providing an empirical examination of the complaint filing stage of the pre-trial process. I have argued that victim-prosecutor interaction and the organizational structure of the prosecutor’s office are reflexively related. Victim-prosecutor interactions during case filing are constituted and interpreted within the context of the organizational structure of the prosecutor’s office, and at the same time, the structure of the prosecutor’s office has the character it does because of the participants and

122. See supra note 16.
123. Konradi, supra note 44, at 48-64.
their interactions within the setting. This reflexive relationship provides a window for understanding the limitations of reform. Embedded in prosecutors' interview questions are the prospective tasks that shape the work of complaint filing. These include charging the suspect, assessing a victim's moral character, creating a solid record, identifying and constructing evidence, identifying defense arguments and responses, socializing the victim into the system, and keeping the victim in the system. These tasks are molded by prosecutors' orientations toward convictability, which are shaped by organizational structures such as promotion and the measurement of prosecutorial competency.

This research confirms previous conclusions that top down statutory reform does not necessarily alter organizational structure. It suggests how current organizational logic and structure can inhibit change regardless of the intentions of reformers. I propose that a critical element in increasing the number and types of cases prosecuted is to alter the organizational structure, culture, and practices of the prosecutors office, and by extension, the courts. Specifically, there needs to be a change in how convictability is assessed to provide room for the filing of risky cases without the potential penalty to prosecutors. Current organizational structure and logic discourage taking risks with hard cases. The relative absence of risky cases from jury pools reinforces the narrow notions of what a convictable case is. More risk-taking by prosecutors, in conjunction with education of the public, may promote victims' independent viewpoints within the legal system.

As Mataesian argues, part of the obstructions to reform are located in legal logic and patriarchy. Although change is possible given the current structure, nothing short of major structural and social change can make the legal system completely victim-friendly. Nevertheless, understanding the relationship between interaction and social structure reveals the depth and complexity of our institutional processes and offers pathways for change.

125. See generally Mataesian, supra note 8; Matoesian, supra note 15.