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"Why Can't America Solve Its Rape Kit Backlog Problem?"

By Anne Easton 01/21/19 9:15am

When Alameda County District Attorney Nancy O'Malley stepped to the microphone on April 25th, 2018, she and her colleagues were celebrating the capture of one of the most notorious criminals on record.

For over four decades, the East Area Rapist, also known as The Golden State Killer, had terrorized the state of California, having committed at least a dozen murders, 50 rapes and over 120 burglaries.

On this day, O'Malley and her colleagues had come to announce that using DNA evidence they'd identified a suspect and that just that morning law enforcement had arrested 72-year-old Joseph James DeAngelo.

"I've been speaking quite a bit on the issue of testing sexual assault kits," O'Malley said at the podium. "This case is a very stark example of why it's important to have those kits taken to the crime lab and tested."

Justice was delayed because crucial evidence in several of those sexual assault kits was never tested.

In 2009, Wayne County, Michigan Prosecutor Kym Worthy discovered nearly 11,000 untested sexual assault kits, or rape kits as they are often referred to, in a crumbling police evidence overflow warehouse.

This was just in Wayne County. One county in one state.

It's estimated that hundreds of thousands of kits sit untested in police and crime lab storage facilities across the country. To date, over 225,000 untested kits have been uncovered. Each one represents a survivor who reported their assault to police and submitted their body to a lengthy and invasive exam.

While strides have been made to clear the rape kit backlog, actually completing the task isn't as easy. There are several factors impeding the timely accomplishment of this goal.

The first attempt at addressing the backlog came in the form of *The Debbie Smith Act.*

On March 3, 1989, a man wearing a ski mask entered Debbie Smith's home, threatened her with a gun, dragged her into the woods, blindfolded her and raped her repeatedly over the next hour. She participated in the collection of DNA evidence for a rape kit, but it was not formally tested and entered into a national database until 1994.

Recognizing the legal power of DNA, Smith immediately became an advocate, working to make lawmakers aware of need to test kits in a timely manner.

Enacted in 2004 (and reauthorized in 2008 and 2014), the federal legislation provides funding to public crime labs for processing DNA evidence. For a state to receive a portion of the allocation, which was $117 million in 2015, they are required to create a plan for the reduction of the backlog.

The next initiative came with the *Sexual Assault Forensic Evidence Reporting (SAFER) Act* that was passed as part of the *Violence Against Women Act* in 2013.

SAFER, in addition to allocating funds for cities to audit and test backlogged kits, provides money for crime laboratories to conduct employee training and purchase DNA analysis equipment to increase testing capacity

In the past, crime labs had received a smaller percentage of funds from the Debbie Smith Act. The *SAFER Act* raised the minimum level of funding for DNA testing and capacity building activities.

Both the Debbie Smith Act and the SAFER Act call for cities to release data on the actual number of untested rape kits they hold.

But, simply passing legislation and provide funding often doesn't even make a dent in the problem, as the warehouse full of untested kits in Wayne County shows.

No one really knows just how many untested kits there are nationwide. Many cities simply chose not to disclose this information.

Because cities aren't required to track the number of rape kits they book into evidence, there is no official count. The number 225,000 comes from research conducted by The Joyful Heart Foundation (JHF), a nonprofit organization specializing in education and advocacy for survivors of sexual assault, domestic violence and child abuse. But, the figure could be as high as 400,000, says Ilse Knecht, Director of Policy and Advocacy at the JHF.

Outlining the organization's *End the Backlog Accountability Project*, she says, "What we do is reach out to police departments and we ask four questions: 'in the last 10 years, how many kits have you taken in? How many kits have you tested? How many kits do you still have in your inventory that are untested? And what are your rules and protocols around rape kit handling?' Sometimes they don't answer at all. Sometimes they send us a hodgepodge of weird documents that we have to figure out. Or, they might answer

one of the questions but not the others. And some just say, ‘We just don't know because we just don't track it.’”

Knecht goes on to say that often the number of untested kits in a particular jurisdiction remains unknown until journalists, nonprofit organizations or concerned citizens step in to investigate. “Sometimes, a city will only start to take action after the local media does an in-depth report about the backlog, or a politician uses it as a campaign platform or makes it a priority,” says Knecht.

So far, the JHF has made public records requests to police departments in 49 jurisdictions. They’ve received information from 33 of those agencies, including major cities such as Albany, NY, Kansas City and Las Vegas. they’ve uncovered a backlog of nearly 40,000 untested kits.

Requests are pending in Chicago, Washington, D.C., and Raleigh, North Carolina, among others.

But, not every city is willing to share this information. Requests for information have been denied by several cities including, but not limited to, Atlanta, San Jose, California, and Camden, New Jersey.

Accountability is the first step to clearing the backlog nationwide, but some cities have already acknowledged their numbers and actively eliminated their backlogs.

In 1999, New York City had at least 17,000 untested rape kits, all of which were tested by 2003. They have not had a backlog since. Los Angeles cleared roughly 6,200 decades old rape kits from their backlog in 2011.

Detective James Blocker, the Sexual Assault Evidence Kit Coordinator for Los Angeles, says, “When we started the process to clear our backlog in 2009, it was a mess. The record keeping was abysmal. There was no central database or anything like that. It was up to each [police] division to log in their kits and make sure that they went to the lab. Just getting an accurate count was tough, and then we had to come up with a way to move everything through the system efficiently.”

Once it was determined that all of the kits would be submitted for testing, then the issue became just how to get all of the kits tested given the resources of the lab. “Essentially, we outsourced virtually all of the kits to private labs, which was a huge undertaking, says Jeff Thompson, LAPD’s Commanding Officer in the Forensic Science Division. “During that time, we had one lab that did about 240 kits per month, another one that did about 120 a month and then a few others as well. At the peak, we were getting results back to the tune of 400 a month.”

The lab then had to review all of the data and upload it into the Combined DNA Index System (CODIS), the national DNA database. “It really stretched our personnel, so

much so that we had to train and hire new techs. We started with 24 and now we have about 85."

Thompson's team isn't the only department that had trouble keeping up with the massive amount of results coming in.

"Suddenly this large chunk of files and tons of CODIS hits are showing up in police departments. This means there's a huge increase in the volume of cases that need to be investigated and many departments don't have the manpower to handle it," says Sergeant Jim Markey, a retired Phoenix Police Department Sexual Assault Investigator. "It's great that everyone wants to test all of these kits and catch all of the perpetrators, but no one thought about this aspect when they started the process of clearing the backlog."

Markey says that this lack of foresight has resulted in the kits going from sitting in evidence rooms, or backed up at the lab, to the results being filed away in drawers at police precincts until someone can, 'get to them.'

To solve this case load issue, Markey points to part of the Sexual Assault Kit Initiative (SAKI), a study released by the National Institute of Justice (NIJ) in 2016 that lists best practices for handling sexual assault evidence collection and handling.

"Part of SAKI calls for investigators who are strictly assigned to follow up on DNA CODIS hits," says Markey. "These cases are not the kind that you want to give a detective who's already handling several hundred new cases a year."

This indicates that there is a system wide processing problem, and one that's not easily solved, says Markey. "Several years ago, a team was brought into our sexual assault unit. They wanted to make us more efficient and effective. They were doing process-mapping so they asked us tons of questions. After two months, they stopped. They went back to our leadership and said, 'There's too many things that go on, too many variables. We can't map what happens in a sexual assault unit because it's human behavior and every case is different.' So, that just shows you how hard it is to actually come up with a process that will work across the board for everyone."

O'Malley agrees, "It is an awful lot like pushing a huge boulder up a hill, but I think everyone agrees that we have to do this, we can't just say, 'this problem is too big and too hard to fix.'"

She says that there is hope. She points to the results of the NIJ study, a 123-page publication that presents a multi-disciplinary approach to tackling the problem.

"Part of the problem is that there are so many moving parts in that you have so many departments – the police, the lab, investigators, the prosecutors -- that are involved in the process," say O'Malley. "In the past, we all sort of did our part of the job. Now, we've

figured out that we need to all collaborate more, and involved the survivors and advocates as well, and that's happening."

Thompson says that technology is helping as well. "Our system in the crime lab is becoming more automated and we're using more robotics which means there are ways to have analysis done faster than in the old days, when DNA was first used as an identifier."

Legislation, increased manpower, inter-disciplinary cooperation, and automation all are key to clearing the nationwide backlog, but it's not something that will happen quickly. Just like the buildup of the backlog itself, it may take decades.