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Qualitative Analysis of Prosecutors' Perspectives on Sexual Assault Nurse Examiners and the Criminal Justice Response to Sexual Assault

Thaddeus Schmitt, BS¹, Theodore P. Cross, PhD¹, and Megan Alderden, PhD²

Objective: The aim of this study was to understand prosecutors' perspectives on the contribution of Sexual Assault Nurse Examiners (SANEs) to evidence collection and trials in sexual assault cases.

Background: Several studies have suggested that a sexual assault case is more likely to progress in the criminal justice system when a SANE conducts the forensic medical examination. However, little is known about how prosecutors perceive SANEs and what they value about SANEs versus other medical professionals.

Method: Semistructured interviews, conducted in one jurisdiction with eight assistant district attorneys who prosecute sexual assault cases, included questions about the value of SANEs in evidence collection and trials. Interview transcripts were analyzed to identify common themes and variability among prosecutors.

Results: Most prosecutors identified advantages for SANEs in evidence collection, trial preparation, and testimony. Specific advantages cited by one or more prosecutors included superior documentation, thoroughness of the physical examination, better identification of injuries, quality of relationships with patients, professionalism, skill in trial preparation and testifying, and credibility with jurors.

Discussion: These findings help validate SANEs' contribution to the criminal justice response to sexual assault, despite the study's limitations in sample size and inclusion of only one jurisdiction. The study also suggests the value of further education about SANEs for prosecutors who may not have the opportunity to learn about the range of skills SANEs possess.

KEY WORDS:

criminal justice; prosecution; SANE; sexual assault

Sexual Assault Nurse Examiners (SANEs) can influence the prosecution of sexual assault in multiple ways. They inform patients about their options in the criminal justice system, gather and document evidence

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in forensic medical examinations, and testify in court as factual or expert witnesses (Campbell, Patterson, & Bybee, 2012; Ledray, 1999; Ledray & Barry, 1998; Ledray & Chasson, 2012). Several studies have suggested that SANEs make a significant contribution to the criminal justice system, but there is little information about how prosecutors perceive SANEs and what specific advantages or disadvantages they attribute to SANEs compared with other clinicians. The aim of this study was to help fill this gap in knowledge through an analysis of interview responses from eight assistant district attorneys (ADAs) in a metropolitan district attorney's office. The ADAs who were interviewed as part of a study of forensic evidence in sexual assault cases were asked to compare SANEs with other clinicians who collected evidence and testified at trial. The interview further explored the ADAs' rationale for any advantages and disadvantages of SANE involvement that they reported.

Previous literature has described the role of SANEs in the criminal justice system and examined differences between SANEs and other medical examiners. SANE programs were originally developed in part because of the reluctance of many physicians to perform forensic sexual assault examinations, due to the time that examinations require and the risk physicians perceive of being obliged to testify in court (Ledray, 1992; Martin, 2007). In rare instances, physicians have even refused to conduct the examinations altogether (Di Nitto, Martin, Norton, & Maxwell, 1986). SANEs, in contrast, commit to performing forensic examinations and expect to testify in court if necessary as part of their job (Ledray, 1999). They receive training in a wide range of skills that emergency room physicians do not typically receive, such as genital injury assessment, proper use of evidence kits, and forensic photography (Campbell, Patterson, & Lichty, 2005; Ledray, 1999). Their skills can influence the quantity and quality of evidence available to use in the criminal justice system.

SANE-A certification through the International Association of Forensic Nurses requires training in, and examination on, the legal aspects of sexual assault cases (International Association of Forensic Nurses, n.d.). Topics include legal definitions, rules of evidence, judicial process, and pretrial preparations (International Association of Forensic Nurses, n.d.). As part of their training, SANEs often observe sexual assault trials and engage in role plays, mock trials, and review of court transcripts (Ledray, 1999). Campbell and colleagues' study of 98 national SANE programs found that 73% of SANEs had served as expert witnesses (Campbell et al., 2007).

Several studies show that SANEs are more skilled in the forensic component of medical examinations than other medical personnel, collect more well-documented forensic information, and are more likely to maintain a proper chain of evidence (Crandall & Helitzer, 2003; Ledray & Simmelink, 1997; Sievers, Murphy, & Miller, 2003). SANEs also showed a greater likelihood than non-SANE medical personnel to document acute and nonacute anogenital injuries, a critical skill for patient care as well as forensic evidence collection (Crandall & Helitzer, 2003; Hornor, Thackeray, Scribano, Curran, & Benzinger, 2012; McGregor, Mont, & Myhr, 2002).

In a study conducted after the establishment of an SANE collective in Albuquerque, more post-SANE victims than pre-SANE victims reported to police (72% vs. 50%) and had a sexual assault evidence kit collected (88% vs. 30%; Crandall & Helitzer, 2003). More criminal charges were filed post-SANE than pre-SANE, with a higher conviction rate (69% vs. 57%) and a longer average sentence (5.1 vs. 1.2 years). Nugent-Borakove et al. (2006) and Burgess, Lewis-O'Connor, Nugent-Borakove, and Fanflik (2006) similarly found that SANE and Sexual Assault Response Team (SART) interventions increased the prosecution rate, with Burgess et al. noting that cases involving these

interventions were 3.5 times more likely to result in a conviction. Using a rigorous quasi-experimental, nonequivalent comparison-group cohort design, which employed multiple sites, Campbell, Patterson and Bybee (2012) found a statistically significant increase in case progression in the criminal justice system from pre-SANE to post-SANE cases, although not every site experienced a statistically significant increase.

Prosecutors have noted in interviews that SANEs' training has directly observable benefits, including defusing defenses such as chain of custody challenges or avoiding ambiguous or inaccurate medical documentation that appears to contradict the victim's story (Crandall & Helitzer, 2003). A survey by McLaren, Henson, and Stone (2009) found that 96% of prosecutors agreed that "the utilization of SANEs increases the likelihood of successful prosecution of sex offenders" (p. 147).

Many prosecutors, despite believing in their utility, initially feared that SANEs would be perceived as less credible than physicians in court (Crandall & Helitzer, 2003; Ledray, 1992). We are aware of no research on this with actual jurors, but two analogue studies found that mock jurors were more likely to render guilty verdicts when an SANE testified, compared with when a non-SANE nurse testified (Golding, Wasarhaley, Lynch, Lippert, & Magyarics, 2015; Wasarhaley, Simcic, & Golding, 2012). After SANE testimony, jurors reported more positive perceptions of the victim's credibility in both adult and adolescent cases and found SANEs more credible than non-SANE registered nurses on sexual assault matters. A Minneapolis SANE program reported that nurses' testimony was found sufficient in every case in which they testified, and in none of the cases did the prosecutor subpoena the emergency physician (Ledray & Simmelink, 1997). Campbell and colleagues found that SANEs were called to testify without any physician testimony in 94% of cases, indicating that prosecutors were widely satisfied with SANE testimony alone (Campbell et al., 2007).

Nevertheless, SANEs in one study were still faced with questions about their qualifications (12% of the time) or had difficulties with defense attorneys regarding the validity of the forensic examination and evidentiary findings (23% of the time), suggesting that attacks on SANEs' credibility are sometimes seen as useful to the defense (Campbell et al., 2007). Crandall and Helitzer (2003) note in agreement that "the lack of MD testimony could be a disadvantage with juries, especially if expert medical testimony is needed" (p. 58). Thus, there may still be an engrained "credibility gap" between physicians and SANEs. Our study specifically addressed this issue, asking prosecutors to compare SANEs and physicians' performance at trial.

Method

The authors conducted semistructured interviews with eight ADAs working in an urban district attorney's office in a

county in the northeastern United States. All interviewees had prosecuted child, adolescent, and/or adult sexual assault cases. Unit supervisors, who oversee the activities of the ADAs and who try cases themselves, were included in the sample. All but one of the ADAs were female, and all were White, non-Hispanic.

SANE Program

The state in which the city is located has a SANE program that provides SANE services to five hospitals in the study county, including a children's hospital. The SANE program in the sample covered 83% of the acute sexual assault examinations in the region and was present in 7 of 10 regional hospitals with an emergency room (Cross et al., 2014). Designated SANE hospitals are required to meet a set of conditions for the SANE examination space, ensuring that adequate materials are available for the examination and that evidence is collected and stored securely. The program also worked to maintain a high level of care even in surrounding non-SANE hospitals by providing training to hospital emergency departments throughout the state and by participating in a committee that oversees the development of forensic evidence collection kits for the state.

Interviews

The inquiry about SANE was one part of a larger interview. The purpose of the prosecutor interviews was to obtain a greater understanding of how physical and forensic evidence is viewed and interpreted by prosecutors as well as how it is used in the prosecution of sexual assault cases. Before their interviews, researchers instructed the ADAs to select and review cases in which they believed the physical or forensic evidence was probative and cases in which the evidence was not probative. Using the selected cases to ground the discussion, the ADAs were asked a series of questions related to the use and impact of both biological evidence and injury evidence in sexual assault cases. The following questions are the focus of the current article:

“Do you feel there is any benefit to having a SANE versus a non-SANE in terms of the quality of evidence you get?”

“Do you feel that there is any difference between having a SANE or a regular ER doctor on the stand?”

The interviews required 60–75 minutes to complete and, with participants' consent, were audiotaped. Approximately 5–10 minutes of the interview concerned the effect of SANEs. Researchers also took supplemental notes during these interviews. A professional transcription service transcribed the audiotapes. When the participants did not consent to be audiotaped, researchers took detailed notes during the interview and typed their notes electronically directly after the interviews.

Some data on the questions about SANEs were missing. One prosecutor said that she did not have enough experience

with SANEs to be qualified to respond to the questions about them. The question about evidence was inadvertently omitted from one interview, and the question about trial testimony was inadvertently omitted from another.

Analysis

Following the analytical methods described in Miles and Huberman (1994) and Ayres, Kavanaugh, and Knafel (2003), researchers used a four-step analytical process: initial code identification, within-interview analysis, across-interview analysis, and consensus analysis. During the initial code identification, researchers independently coded three interviews each and met to establish a codebook with definitions for each descriptive code and potential subcodes. Significant statements (i.e., excerpts) representing each code or subcode were identified, agreed upon by both coders, and used as examples for definitions for each code. These initial codes were then used to guide researchers during the within-interview analysis. During this analytical stage, researchers read each interview separately to get the “gestalt” of each and identify potential themes and additional codes. In addition, the researchers conducted within-interview analyses to discover significant statements, patterns, or phrases for each prosecutor. During this process, researchers independently coded each transcript line by line. Once the within-interview analyses were completed, researchers then conducted across-interview analyses by looking for commonalities and differences across interviews. The researchers then organized the across-interview findings into preliminary themes related to the research questions and study aims. Once the across-interview analyses were completed, the researchers then met to compare findings and develop a consensus analysis.

Results

Prosecutors' appraisal of SANEs was largely positive. Six of the seven prosecutors who answered the above questions described advantages of SANEs compared with other medical providers, most often in elements of trial preparation and testimony. One reported little or no difference.

Question 1: “Do You Feel There is a Difference Between SANEs and Non-SANes in Terms of the Quality of Evidence You Get?”

Prosecutors varied from neutral to positive in their opinions regarding the difference between SANEs and non-SANes on the quality of evidence. Two did not think that there was a difference at all, and two thought that the use of a standardized kit protocol eliminated differences between SANEs and other medical providers in evidence collection per se.

Three prosecutors perceived a slight SANE advantage in the quality of evidence based on SANEs' familiarity with the process and consequent ability to put victims at ease and avoid mistakes. One interviewee was not aware of the

difference in the quality of the biological samples collected, but felt that SANE documentation was superior in the detail it provided, because of SANES' specialized training and dedicated time for documentation not available to emergency department staff due to competing demands.

Finally, two prosecutors perceived a big difference between SANES and non-SANES in the quality of evidence. One cited how SANES' training made them superior in injury detection:

I mean there's no comparison between a Pedi SANE [an SANE specifically trained to handle pediatric cases] or a SANE nurse and a regular ER doctor or a PCP. There's just no comparison. The ER docs, usually, and the PCPs are not trained to see anything unless it slaps them in the face or whatever...[Referencing a recent case] The PCP actually examined only one of the girls, hours before the PediSANE did and was like—missed a huge injury that was later—I mean the PediSANE took photos like it was there and the PCP just totally missed it....

Another prosecutor felt that SANES conducted more thorough examinations and were more sensitive to victims and better trained to talk to them, with the result that SANES were more likely to obtain more complete accounts from victims.

Question 2: "Do You Feel There is a Difference Between an SANE, a Non-SANE, and a Physician in Terms of Being Placed on the Stand or in Court?"

Trial Preparation

Several prosecutors noted that SANES' professionalism, training, and experience with the legal system made preparing for the case easier. As the following two excerpts show, they found SANES better prepared and easier to contact compared with doctors, who were often less available:

Every SANE nurse that I have ever seen has been prepared, punctual. This is their job.... Part of your job is to come in and testify when called about the scenes that you respond to. The SANE nurses are prepared to do that. They're willing to meet with you on every single case for trial prep...—typically phone meetings because they travel so much. You'll have an hour-long case prep with them on the phone where they'll walk you through stuff.

I like it when I see the SANE because I know where to find them. I know the director. I email her. "Here's a subpoena." Life is easier.

SANES' experience with trials and testimony was also cited by one prosecutor as being critical at this stage:

They'll tell you what they expect to be asked [about]—they have that level of expertise in testifying that [enables them] to foresee, even what you can't, what they're going to be asked by the defense attorney about the forms they filled out. They're unbelievable to work with, in my opinion.

Trial

SANES were strongly praised as trial witnesses. One advantage over other medical professionals was SANES' increased credibility based on their specialization in sexual assault, training, and experience conducting examinations:

I think absolutely as a juror, it's way more powerful to have somebody—not that there's any difference in professionalism, not that there's any difference in knowledge or education, but for a jury to see, this is a person who all they do is respond to sexual assault scenes—or victims. I think it's certainly preferable to have someone who's specially trained in this and who are not only professional nurses trained in this, but professional witnesses.

As a lawyer, you need to establish the whole chain of custody thing. The fact that they get up and say, "I've done this thousands of times, and this is one in which I directly took the sample, and I sealed it and I put it in our freezer, which is locked and can only be released to the detective assigned to the case, and the detective picked it up and directly dropped it off at the crime lab." It's people who know the chain of custody and know why it's important and follow it every time 'cause they're trained to.

Testimony

Several prosecutors also cited SANES' superior ability to testify:

They're often much better witnesses at trial because they do it much more often. They're called in to testify frequently so they're good at it. That is a significant effect. It's not across the board they're better, but the likelihood that you're going to get a polished, experienced witness is much higher.

The SANE nurses are trained to say, "I've examined thousands, and it's actually not atypical for a rape victim to come in with no vaginal tearing because they're meant to be—" I forget the word they use. They're really good at explaining

that, which, an ER doctor, I don't know if they would be...as trained to say that.

SANE testimony was used to emphasize the thorough and therefore somewhat arduous examination process, the intensity and invasiveness of the examination, and any follow-up treatments.

It's extremely powerful to a jury when you stand up and you say—you describe the actual process which, until I came to this unit, I had no idea what it involved. It suggests to the jury that no woman would ever undergo this unless they were, in fact, sexually assaulted because it's a four-hour process typically. Three hours minimum, four hours maximum, I've heard...It is so intense and invasive.... It's something that you can—although you can't ethically imply it, the jury, I'm sure, is thinking that nobody would ever undergo that voluntarily.

They can also testify to what they prescribe people. Again, we can't say, "she took a year's worth of HIV cocktail. Who in their right mind would do that unless they were definitely raped?" They have to prescribe anti-nausea medication.... You can say to the jury, "The SANE nurse testified that then she was prescribed Plan B and the technical name for what we refer to as the HIV cocktail."

Relationship With Patients

One prosecutor thought that SANEs had substantial influence at trial and related it in part to the quality of their relationship with the patient:

I think they're so impressive to a jury, and they're great witnesses, and they're great with the victims. Every single victim who comes in, they see their SANE nurse, it could be years and they recognize them and they hug them. They remember these people, and the SANE nurses almost always remember the patient. Not from the forms, but remember the patient that they worked with. They remember that it was an hour after they were sexually assaulted. I always ask them to come in. I'm like, "I know you're not exactly probative in this case, but can you come testify 'cause it's so powerful?"

Comparison With Physician Witnesses

One prosecutor noted a little difference between the testimony of SANEs and that of other medical professionals. Another prosecutor reported advantages and disadvantages for each:

Doctors sometimes are more confident, but nurses, by sometimes being a little more nervous up there, are that much more likeable. That's the truth. I've had it work both ways. Everybody likes the nurse that walks onto a witness stand. Doctors, most people do too, but sometimes—I've certainly had doctors over the years that the confidence can get into the arrogance area too, but not often.

Discussion

Most of the prosecutors we interviewed reported meaningful advantages of SANEs in evidence collection and in preparing for and testifying at trial. This is consistent with the findings from several qualitative and quantitative studies cited previously.

Prosecutor Perspectives About SANEs and Evidence Collection

Most prosecutors who answered the question about quality of evidence saw at least some advantage to having SANEs conduct the examination. The specific advantages in evidence collection noted depended on the prosecutor. One saw a difference in documentation, one saw a difference in SANEs' ability to relate to patients and reduce errors in forensic examination, one saw a difference in SANEs' ability to detect legally relevant effects of the assault, and one saw a difference in the thoroughness of SANE examinations and history taking. Two prosecutors thought that the presence of a standardized kit rendered SANEs and non-SANEs equivalent in evidence collection. This is understandable, given that the goal of a well-designed kit is to increase the quality of evidence collection broadly.

The differences between SANEs and non-SANEs in evidence collection that prosecutors in our sample reported did not seem as dramatic as the differences reported by Crandall and Helitzer's (2003) interviewees or McLaren et al.'s (2009) survey respondents, but the small size of our interview sample makes this comparison difficult. This difference may vary by jurisdiction. Prosecutors also may not be in the best position to judge the quality of evidence collection, because they are unlikely to assess evidence kits directly and may not understand the skills needed for optimal sample collection. Moreover, because of case attrition in the criminal justice system, the cases prosecutors work closely with may have higher-quality forensic evidence generally. This might mitigate the effect of differences between SANEs and other medical professionals in evidence collection.

Prosecutors' Perspectives About SANEs and Trials

Prosecutors in our study provided stronger and more praises for SANEs' contributions to trials than to evidence collection. Prosecutors cited SANEs' professionalism (availability,

punctuality, and preparation), their skill in assisting with trial preparation, their credibility with jurors based on SANEs' experience and training, and their skill in testifying.

Several points about the utility of SANE testimony have not been addressed by previous studies. SANEs' testimony detailing the demanding nature of the examination and medical follow-up is used to underline victims' commitment and thereby bolster their credibility. SANEs similarly were noted to add an emotional impact physicians likely would not, because of the unique relationship between the SANE and the victim. Studies have noted that this emotional connection is likely to increase victim cooperation (Burgess et al., 2006; Crandall & Helitzer, 2003), but its potential effect on juries has largely gone unnoted. One prosecutor also felt that SANEs were more likeable. Warmth and likability have been shown to contribute to juror perception of expert witnesses and influence outcomes in mock trial scenarios (Cramer, Brodsky, & DeCoster, 2009; Neal, Guadagno, Eno, & Brodsky, 2012).

Limitations

This study was limited by the reliance solely on a small number of prosecutor interviews conducted in a single county. The substantial attrition of cases in the criminal justice system means that any one prosecutor will likely have a relatively small sample of cases on which they base their inferences about SANEs and that the characteristics of these small samples of cases are likely to differ substantially across prosecutors (Lonsway & Archambault, 2012). Our results serve as a "snapshot" of local attitudes, from a limited sample of prosecutors, and are best interpreted as an avenue for further research rather than an authoritative representation.

The inquiry regarding SANE, although valuable, was not the primary focus of the study. We also did not have an opportunity to use other research methods such as interviews with SANEs and crime laboratory professionals and analysis of trial documents and transcripts. Some prosecutors may not realize the potential added value of SANEs' knowledge in how to collect samples and when to take discretionary steps based on the patient's history, such as collecting additional swabs from areas of the body involved in the assault. This may affect their perception of the value of these contributions and may have made it more difficult to answer the first question. We also lacked data on prosecutors' level of experience, which might be a predictor of their responses.

Future Research

Future research needs to assess prosecutor perspectives in a range of different communities. New research should examine more thoroughly prosecutors' knowledge of SANEs' contribution to evidence collection. Future studies could also look more precisely at the effect of SANEs in court,

using individual case studies to see how SANE testimony was utilized in closing statements and elsewhere in prosecutor's arguments. New research is needed to compare examination results of SANEs and other medical personnel using the same kit and look at the contribution of protocol adherence, added swabs, and examiner training and experience. In further research, more allied professionals such as police, crime laboratory personnel, and victim advocates could be interviewed to gain a more comprehensive account of SANEs' contribution to the criminal justice system.

Implications for Clinical Forensic Nursing Practice

These findings help validate SANEs' contribution in the criminal justice response to sexual assault. They could help support advocacy for continued attention to the criminal justice system in SANE training, for developing an active role in SANEs' relationship with prosecutors, and for funding SANE programs. Prosecutors provided positive feedback about SANEs' professionalism and personal qualities and their contributions to evidence collection, trial preparation, patient support, and testimony. Citing these results could direct greater attention to SANEs' contribution to trials; our impression is that this contribution receives less attention in the literature and in professional circles than SANEs' contribution to patient care and evidence collection.

This study suggests the value of further education of prosecutors about SANEs. Interviewees often cited somewhat different advantages of having an SANE involved in the case. It is not clear to what extent interviewees all shared the same knowledge about SANEs but differed in their appraisal or, conversely, differed in their knowledge about SANEs. Given the attrition of sexual assault cases in the criminal justice system, some ADAs may work closely with SANEs on only a small number of cases and not have opportunities to learn about the range of skills SANEs are trained in.

If the belief that a standardized kit eliminates differences in evidence collection between SANEs and other medical professionals is prevalent, SANEs may want to communicate more about the advantages of SANEs' training and experience in methods of evidence collection, documentation, and kit management as well as their knowledge of how to use the patient's history to obtain additional swabs when indicated. They could also promote new research to test this belief.

Conclusion

This study provides additional support for the positive impact of SANEs on the criminal justice system. It suggests how SANEs' specialized focus, training, and experience may contribute both to the quality of evidence in criminal cases and to trial testimony. Going forward, the findings can

inform further development of SANE programs, training, and research as well as the education of other professionals about SANEs' contribution.

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