
Taking on the Tough Sexual Assault Case – Moving Beyond Unreasonable Doubt!

Reasonable doubt!! What is it? What is it not? How do we know when we have it or don't? What impact does the presence of reasonable doubt have on the initiation, investigation, prosecution, and decisions made by the trier of fact? What place does reasonable doubt have in determining whether a report of sexual assault is taken seriously, documented, investigated or prosecuted? The answer may surprise you. All too often, unreasonable doubt is inappropriately confused as reasonable doubt. When a report of sexual assault is made, there is a process by which we filter the information. Most, within moments of hearing a report will begin to make critical, and all too often, inaccurate judgments of the report and of the reporting victim.

Information in many sexual assault reports such as delayed reporting, prior or post consensual contact between the reported victim and accused, previous reported sexual assault experiences, lifestyle preferences, victim behavior things that just don't seem to make sense, inconsistent statements, etc., are **often misinterpreted** as reasonable doubt. These factors are common, although complex aspects which, if properly understood, should have no bearing on making determinations documenting, investigating or prosecuting reports of sexual assaults.

When unreasonable doubt kicks in, so does our confirmation bias. Further, unreasonable doubt causes narrowing of our "aperture" when responding to, investigating and prosecuting sexual assault cases. The effects of a case built on unreasonable doubt don't just end at the summation of the investigation but play out in the response to victims, the court room, and the trier of fact. Unlike "unreasonable doubt", reasonable doubt are facts or evidence that can prove or disprove that a crime occurred like evidence of consent, mistake of fact, evidence the crime did not occur, false information, etc. All too often there is a significant misunderstanding of reasonable doubt. Reasonable doubt is an essential aspect of jurisprudence and is the pinnacle decision when deciding to take away the accused liberty, resources, and even life.

This presentation will focus on identifying elements of the sexual assault experience that indicate brain based responses to fear and trauma in an attempt to better clarify whether aspects of the report being viewed as unreasonable doubt are in fact evidence of a crime. The presenters will clearly and concisely provide information about common "red flags". Strategies will be discussed to enable a better analysis thus overcoming societal and personal bias, which may inhibit finding the truth and context of the experience. Balancing the totality of the case against an accurate set of metrics, one that is not informed by "unreasonable doubt" but rather facts that provide the framework to either prove "positive evidence" or disprove "negative evidence" the reported crime.

Learning Objectives:

- Presenters will discuss and identify common and intuitive victim behaviors often mislabeled "counterintuitive victim behaviors"
- Differentiate between what is viewed as unreasonable doubt and reasonable doubt
- Discuss the challenges of sexual assault cases and identify the Red Flags
- Mediate the adverse impact of unreasonable doubt
- Discuss and provide insight on how to mitigate confirmation bias
- Discuss balancing the case against accurate metrics