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Authors

Whitney, Spencer
UC Berkeley Graduate School of Journalism

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Ending the Backlog

By Spencer Whitney

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When Sabrina Sadler opened her eyes, and her vision came into focus, she realized she was in a hospital bed. The voices around her grew louder and more distinct. She felt pain down her back and legs. A police officer waited quietly outside of her room as Sadler began slowly to piece together the events of the previous night.

She sat up in her bed as the police officer came into the room, and began asking whether she wanted to file criminal charges. A nurse asked Sadler whether she had any relatives to call; she gave them her parents' phone number. Her head throbbed. A nurse checked the intravenous drip in her arm. Another nurse asked if Sadler was willing to undergo an examination to collect evidence. She was coming to realize what had happened to her, and with her hands trembling, she nodded.

Then the doctors came in. They asked her to undress over a large sheet of paper to catch any evidence traces on her clothing. They put each article in a separate paper bag to prevent cross-contamination. They scraped underneath her fingernails, hoping to find DNA from the saliva of the man who had attacked and raped her. They put cotton swabs into her mouth and genitals, and then took the swabs out to smear onto glass slides for analysis. They trimmed her fingernails and put the cuttings in a small envelope. They took two samples of her blood.

Doctors combed and took fibers and hair from different parts of Sadler's head; they plucked pubic hair too, to be used for comparison purposes. They conducted a pregnancy test, and then tests for HIV and other sexually transmitted infections. Someone prescribed antibiotics to cover against any infections. The examination took four hours to complete.

When the doctors finished, everything they had collected was deposited in a small, white plastic package. No more than 10 inches in diameter, these packages contain sterile swabs, glass slides with plastic cases, a scalpel, envelopes, metal containers, a comb, bags for evidence collection, sexual assault documentation forms, and seals and labels for every item. There's a shorthand for them: rape kits.

Many women who have survived sexual assault describe the examination process as another violation; doctors and nurses treat their body like a crime scene, searching thoroughly for anything that might eventually become evidence, and the rape kit is where all that evidence goes. Everything the medical people lift and swab from the hair, skin, and saliva of assault victims is collected into these kits.

Sadler was 20 when the doctors-- an emergency team working at Sutter Memorial Hospital in Sacramento, where Sadler was a college student-- assembled hers.

"I remember this process as being one of the more uncomfortable experiences in my life," Sadler says. "But I also understood how necessary it is to make sure that something would be done and justice would be served."

The packages go by many names; Sexual Assault Evidence Collection Kits, Sexual Assault Forensic Evidence Kits, Sexual Offense Evidence Collection Kits, and Physical Evidence Recovery Kits. In the forensics world they have acronyms: SAFE, SOEC, PERK. To many victims, the one that contains their own material gets a special nickname. They refer to it-- and the process that follows its preparation--as The Kit.

That kit, the first aid-sized box of swabs and human cells, is then supposed to enter the criminal justice system- so those cells can be compared to national databases, and the victim of attack can receive swifter and more definitive justice. But most of the time, it doesn't work that way. The wait for this one step, the processing of the rape kit, can go on for months, even when the justice system is theoretically working as it should; it may be years before a DNA match turns up on the database, perhaps because many kits have remained unanalyzed.

For many sexual assault victims this whole period of uncertainty--the long inaction before there is any hint of justice or a legal case--is simply referred to as "the wait." The wait can take months, or longer; in many cases it is years before reliable DNA matches show up in a forensic database. Detectives will only contact the victim to let her know if there has been any progress at all in catching the perpetrator. It took two years before Sabrina Sadler's rapist was arrested, because there was no DNA match in the system yet. Sadler, it turned out, was a fast case. There are an estimated 200,000-400,000 rape kits still untested in the United States, according to the National Institute of Justice (NIJ), dating back in some cases to 2004.

The NIJ found that in recent years, crime labs have increased their capacity to process DNA cases, but have not been able to reduce backlogs, primarily because the increase in demand has continued to outpace the increases in capacity. Even though backlogs persist, government funded initiatives such as NIJ's DNA Backlog Reduction Program have helped crime laboratories nationwide to reduce backlogs by over 150,000 cases. This has also allowed state and local DNA laboratories to increase their capacity to work cases between 2004 and 2010.

Sadler didn't even know about the backlog until 2009, when she had begun working with women who were victims of sexual assault as part of the Weave Organization, a crisis intervention service in Sacramento. The backlog was so big by that time, as Sadler came to learn, when hearing about how long some victims cases took as long as a decade, that her case qualified as a quick turnaround in comparison. It had only taken a few months for her own kit to be processed, she learned--not years.

In recent years, there has been a surge of public outcry and frustration --from women's advocacy groups, Human Rights Watch, and rape victims themselves -- about the growing backlog of untested DNA evidence. Human Rights Watch found that, it can take over a year from the time rape kit testing is requested until test results are received by the requesting law enforcement officer. If not for sloppiness, human error, and systemic

failure behind the rape kit backlog, Sadler says now, rapists could be prevented from attacking women or repeating the crime in a different state. By 2009, the federal government and all 50 states had passed bills requiring collection of DNA from offenders convicted of certain crimes. In addition, the federal government and many states had also passed legislation to allow collection from people who are arrested for certain crimes.

“The wait is something that stays with you every day, and in the back of your mind, you are always questioning the situation,” Sadler said. “It’s like waiting hours, days, months, and years on end to find out the results of serious medical test. You keep asking yourself, why is it taking so long? When will I know something so that I can move on with my life?”

David Chin, an Oakland wedding and portrait photographer, has made himself into something of an expert on the national problem of the rape kit backlog.

Chin has been combing over data and research from FBI crime statistics, searching for answers about why there is such an enormous backlog of over 400,000 untested rape kits sitting in law enforcement storage facilities nationwide. Chin is working to create a new foundation, tentatively named Healix, that he says will help speed up processing the backlog of rape kits.

Chin says he became interested in actively ending the rape kit backlog last year, after a close friend in Oakland told him she had been sexually assaulted. She had tried contacting the police to get an update on her case, he says, and was disappointed to find how little progress had been made. Chin wondered why his friend’s case was taking so long to turn up any new information, and began looking for reasons on his own.

There were big possible reasons, Chin understood--the justice system moves slowly, courts are clogged, Oakland’s Police Department is understaffed, and so on. But what most surprised him was learning that his friend’s case, like Sabrina Sadler, was taking so long partly because there was a backup simply in analyzing the information inside her rape kit.

“I was reading about sexual assault cases and how people who were wrongfully accused for a crime were later set free based on DNA testing online when I learned about the backlog,” he says. “I hadn’t thought much on the subject, but after my friend explained what had happened to her, it really put it into perspective for me. As I started doing more research on the DNA backlog, I realized that this is a problem that could have been prevented.”

Chin’s own self-education in the backlog serves as a kind of introduction to the history of DNA profiling. For many years, fingerprints were the gold standard for linking sus-

pects to a crime scene. Then in 1984, a University of Leicester professor named Alec Jeffreys developed a technique for detecting an individual's identity through the person's DNA. Five years earlier, Jeffreys had discovered how to detect human genetic variation at the DNA level, and he was the first to produce an estimate of how many gene sites are in the human genome and where the genetic variation occurred.

Jeffreys realized the possibility of using DNA for a kind of modern version of fingerprinting after trying to trace the genetic markers of families by searching for patterns of inherited disease-causing mutations in the repeated DNA segments carried by all humans. He used something called the blot technique, which separates and transfers DNA fragments, and soon learned that every individual (except twins) has a unique DNA profile. Jeffreys realized that DNA could be used to identify individuals.

The first use of DNA technology in criminal cases began in 1986, when British police were investigating the rape and murder of two girls, Lynda Mann and Dawn Ashworth, in the English Midlands. The police had in custody a suspect named Richard Buckland, who confessed to Ashworth's murder, but denied murdering Mann. The police wanted to use DNA to link Buckland to the Mann murder, and called in Jeffreys. When the test results came back, they showed that Bucklands' DNA did not match the evidence found at the crime scene, and moreover that he had given a false confession while the real killer was still walking free. Police tested 5,000 men's blood and saliva samples in the village, looking for a positive match. After six months with no results, one of the locals told police that a man named Colin Pitchfork had paid him to take the test for him. Pitchfork was arrested soon afterward, and a sample matched his DNA to the murders.

In the early use of DNA, the availability of technical specialists was limited, and the length of time needed to complete the laboratory analysis restricted the application of the technique. Once the value of DNA testing had been demonstrated to the justice system, technology was developed to improve the speed and sensitivity of the testing, leading to its widespread application in criminal investigations.

In particular, investigators found this kind of testing was useful for the intimate brutality of sexual assault. One of first forensic methods used to analyze DNA by investigators was restriction fragment length polymorphism (RFLP) to compare samples by the length of the strands of DNA. Law enforcement has had the technology to take samples from rape kits and match the DNA of victims to perpetrators since 1989, when the DNA matching became a globally accepted practice.

But as Chin learned all this history, he also learned how slowly the criminal justice system was handling the full steps of DNA testing in the cases of rape victims. There are many stages between the emergency room swabbing women like Sabrina Sadler and the use of evidence in a court case.

First for example, all the evidence for the kits goes into paper bags or envelopes, not into plastic bags.

This is important; plastic bags retain moisture, which can damage DNA. Sunlight and hot conditions may also damage DNA, so officers try to keep biological materials at room temperature. They label the bags with information about what the material is, where it was found and where it will be transported.

Once the DNA evidence is collected from the crime scene and forensic medical exam, the kit is repackaged and stored until it is assigned to an examiner. The kit will be sent to the crime lab if the victim chooses to pursue a case.

Once an examiner is assigned to work the case, the kit is retrieved from evidence storage. Based on the facts of the case, an initial screening is conducted for the presence of semen. This is confirmed through a microscopic examination of the corresponding smears.

If no semen is identified, then possible saliva stains are taken to DNA analysis. The number of samples taken to DNA depends on the number of assailants, previous intercourse partners, and types of assault committed on the victim. Once DNA analysis is completed, the profiles are made by the examiner and a second analyst. Depending on the results, the examiner must decide whether further DNA testing is warranted. The crime lab will use the DNA evidence to develop a DNA profile, which contains a certain set of identifiers or characteristics specific to this particular DNA strand. All this generally happens in three to four weeks, but then comes the wait.

Crime labs and law enforcement officials are then supposed to compare DNA profiles collected from crime scenes to DNA profiles of potential suspects to see if they match. The main resource for potential suspect DNA profiles is the Federal Bureau of Investigation's nationwide DNA database system, known as CODIS (the Combined DNA Index System)— a system of federal, state, and local databases that contains DNA profiles from known criminal offenders and DNA evidence from past crime scenes. CODIS was developed in the late 1990s and now contains than seven million offender profiles.

A search is then supposed to take place for matches between DNA profiles and the DNA found in the current case, hoping to uncover a suspect. There are forensic labs for this, a national system that is supposed to combine science and computer technology to match DNA and track down likely perpetrators.

But every one of those stages requires funding and organization, and many police departments have had inadequate amounts of both. There's the cost of the testing itself, for example. Since 2009, under the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA), a state must ensure that victims have access to an exam free of charge or with a full reimbursement. But in some cases, rape survivors in certain parts of the country have nevertheless been charged for their kit collection and processing, forcing victims to deal with receiving a bill. A ProPublica report discovered that even states that abide by VAWA can take advantage of its loopholes, leaving victims without the full protections that lawmakers intended. For example, VAWA also does not require states to cover non-forensic medical expenses, including ambu-

lance rides, emergency room stays or treatment for injuries sustained during the assault, which can be charged to the victim. Besides the rape kit tests, rape survivors may be charged for other expenses, such as a pregnancy test, antibiotics, and medical supplies, which can bring the total bill to \$1,200 or more.

The steady demands for DNA testing, a shortage of technologists, limited budgets for testing, and the roughly \$1,200 cost of collecting and processing each rape kit has helped to create the backlog over many years. A report prepared for the National Institute of Justice in 2009 found that of 150,070 unsolved rapes over the past five years, 27,595 -- more than 18 percent-- produced forensic evidence that was never sent to a lab, possibly due to technicians being overloaded with case work.

The other problem is that nearly half of the police agencies surveyed said they thought that they were not to submit such evidence without an identified suspect — the very purpose of seeking DNA matches. "Some law enforcement agencies are still not fully aware that forensic evidence can be used as an investigative tool and not just during the prosecution phase," the report said.

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The big numbers Chin was absorbing were startling. Each year, more than 200,000 cases of rape are reported to law enforcement in the United States. In California alone, around 30,000 people sought crisis help from one of the state's 63 rape crisis centers between 2010-2011 to report a rape or sexual assault. Chin found that California still has the largest known rape kit backlog in the United States, with an estimate of more than 12,000 untested rape kits sitting in police storage facilities.

"This is a social justice that can be salvageable within our lifetime," he says. "All it takes is time, money and people actively working to process the kits. There is enough DNA testing equipment available. It just doesn't seem like a priority for law enforcement."

In 2000, the Oakland Police Department began submitting DNA samples that had been stored away on its shelves to the FBI's CODIS. The database contains DNA forensic unknowns from crime scenes, DNA samples from past convicted felons and DNA from anyone arrested for a felony. The objective was supposed to be to find a match, or "a hit," for DNA profiles in both the statewide database and crime scene evidence. This was meant to help law enforcement to identify some perpetrators behind unsolved killings, assaults and rapes.

As part of the DNA analysis, evidence samples are run through the CAL-DNA Data Bank, a system that contains the DNA profiles of about 1.8 million offenders and arrestees in California, as well as crime scene evidence. It is the largest working DNA data bank in the United States, and the fourth largest in the world. The Bureau of Forensic Services maintains 13 regional laboratories in California, seven of which con-

duct DNA testing of biological evidence to assist law enforcement in solving sexual assault cases and other crimes of violence.¹

But despite these advances, about 200 of the cases reported since 2001 have still not resulted in suspects being located. Lt. Kevin Wiley of the Oakland PD's Special Victims Unit said in an CBS News interview that the reason some kits were never tested was that sex crimes investigators were overwhelmed by their individual caseloads in 2002, when some saw more than 650 cases per investigator. That's ten times the load Wiley says investigators should be carrying. Due to the backlog in violent crimes, victims could wait as long as a full year before being contacted about any progress on their kits.

"As of 2010, our investigators were down to about 55 to 70 cases per investigator," Wiley said.

In 2010, the Oakland Police Department took a census to document all of its untested rape kits in storage and found almost 500 rape kits that had never been processed at all. These were from what police call "solvable" stranger rapes-- the victim was assaulted by someone she didn't know and solvable in cases that involve a serial rapist. There is a higher priority placed on processing stranger rape kits over acquaintance rape cases because in acquaintance rapes law enforcement operates under the assumption that there is no need to test a rape kit in the case, since they already know who the suspect is. Lab technicians began working hard to process many of these kits. According to the Oakland Police Department Crime Lab, there are 2,000 kits that still need to be processed, some dating back several years.

A few other big cities, meanwhile had made similar discoveries. New York discovered a 17,000-kit backlog in 1999. In Los Angeles, more than 6,000 kits had yet to be tested in 2009. The good news, Chin found, was that certain aggressive approaches to clearing the backlog appeared to be having an effect.

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Last year, the Los Angeles Police Department announced that it had ended the city's backlog of untested kits--dropping the numbers from more than 6,000 in 2008 to zero. The city's first steps in the remedy proved to be thoroughly low-tech, officials said; the Los Angeles Sheriff's Department (LASD) had 26 pre-academy cadets hand-count all of the evidence in storage. According to a 2010 report from the Office on Violence Against Women in the U.S. Department of Justice, cadets found 6,000 sexual assault kits in the freezers; over 4,000 of the kits had not yet been analyzed as of November, 2008. LASD considered the backlog to include any case they had dated before November 2008, and all of these cases were or are being outsourced to private vendor laboratories.

Cases nearing California's statute of limitations were given top priority, followed by cases in which the suspect was unknown. Detectives would then notify victims as soon

as their kits had been processed. In addition, LASD officials added 11 criminalists to their biology section, and used 15 staff members to manage the outsourcing of the kits to private DNA labs. By outsourcing them, the agency was able to analyze 400 cases per month. LASD works with private DNA labs, the state laboratory, and Marshall University on an National Institute of Justice-funded pilot project, testing various methods to speed up DNA analysis from sexual assault cases.

A similar success story emerged in the last decade in New York. In 1999, the New York Police Department discovered nearly 17,000 untested rape kits. With the backing of then-Mayor Rudolph Giuliani and city Police Commissioner Howard Safir, department officials were able to contract testing to three outside labs. By 2003, these outside labs had eliminated the backlog. Then in 2007, the city opened a \$290 million Forensic Biology Laboratory, located in the city coroner's office at the Office of the Chief Medical Examiner (OCME) that now performs more DNA testing than any other lab in the country, including the FBI's. OCME was able to eliminate the backlog by screening kits almost immediately upon submission to the laboratory as well as by using 160 less experienced analysts to work under the supervision of veteran criminalists. If there are issues that need to be clarified before continuing with forensic analysis of the sexual assault case, OCME will contact the NYPD to request more information and direction on how to proceed. By promptly testing every rape kit, New York has achieved a 70 percent arrest rate for rapes, which is three times the national average.

According to the Joyful Heart Foundation, a domestic violence and sexual assault victims' advocacy organization based in New York and Hawaii, in jurisdictions where there is no law that requires the testing of all collected rape kits, the backlog continued to increase dramatically as crime labs didn't have the resources to process the kits promptly.

So in 2012, Chin decided to help put together a foundation to look at what existing technology could be applied toward getting the backlog processed more efficiently. He gave it the name Healix, a play on words referring to the double helix structure of DNA and helping victims to receive justice. His idea was to develop a new database, which would serve as a preliminary storage area for DNA data being transmitted to CODIS. He has been looking for more experts, particularly software engineers and data analysts in the Bay Area, to help him create this new system, and wants to make the DNA data faster to process with a wireless connection from hospital to CODIS database.

"With pressure from local community organizers and voters as well as funding from non-profit advocacy groups, we can really make a difference in ending the backlog," he said. "If investigators are overwhelmed, why not outsource the work?"

Chin says this is where the Healix foundation would come into play and assist law enforcement with testing the kits. "The idea is that the Healix foundation has steps to achieving its goal," Chin said. "First should be to end the backlog of rape kits and provide people who want to help end the backlog with a vehicle for them to latch onto. I also want to build a system for DNA testing that would prevent further backlogs from oc-

curing in the future. It's important to get the word out that there is a solution to the problem."

Sadler now works as a rape prevention educator in Solano County through Safequest, a crisis intervention services organization for survivors of domestic violence and sexual assault. She has spoken on many California college campuses about how to deal with sexual assault, and in Solano County she's addressed high school and middle school groups as well.

"People seem to have this idea that the DNA testing process and matching the evidence with a perpetrator takes no time, like on the television show 'Law and Order: Special Victims Unit'." Sadler said. "The reality is that this process can take well over six months."

Sadler remembers calling the police every few weeks to get an update on the status of her case. The police would return her call after a few days to let her know if any progress had been made. This went on for three years, until a blood sample from her attacker matched the DNA sample of semen taken from Sadler's rape kit. After the match was found, the criminal court trial proceeded for another year before her attacker was convicted and had his DNA entered into the system. Sadler was 26 by the time the trial had ended.

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A New York rape survivor named Natasha Alexenko, founder of an advocacy organization called Natasha's Justice Project, has also been working with law enforcement and municipalities to help end the backlog of rape kits. Alexenko was raped at gunpoint in 1993 in the hallway of her Manhattan apartment building. She immediately reported the assault to the police and went to a hospital, where she submitted evidence for a rape kit. Alexenko says she repeatedly called detectives about the status of her case, but got no answers. Only months before the 10-year statute of limitations on her case was to expire did New York City prosecutors send the rape kit to be analyzed and alert her of the process. The suspect was eventually identified through DNA analysis and is now serving a long prison sentence.

Still, there is more work to be done in ending the backlog. Recently, Natasha's Justice Project received about \$125,000 in donations to help local governments eliminate their jurisdiction's backlog of rape kits that have been collected, but not tested. The grant is part of a pilot project to establish a model procedure for the elimination of a jurisdiction's accumulated untested kits. Alexenko is featured in the upcoming HBO documentary "Sex Crimes Unit," which details how her attacker was finally caught after a rape kit sat on an evidence shelf for a decade.

"I've spoken with Alameda County District Attorney Nancy O'Malley about processing the backlog of about 2,000 rape kits," Alexenko said when asked about her work in the Bay Area. "They are working hard to accurately process the kits and create a database so that the backlog won't happen again. It's important for law enforcement agencies to send every booked rape kit for testing, and keep track of how many kits are sitting untested. I applaud O'Malley's willingness and tenacity to tackle this issue."

Alexenko says the largest problem in ending the backlog isn't just funding, but also a lack of communication between law enforcement, lab technicians, and victims. In March, Natasha's Justice Project donated \$500,000, and pledged to raise \$1 million more, to eliminate a backlog of untested rape kits in Alameda County. The untested kits in Alameda County will be sent to an independent laboratory for initial testing and the results will be reviewed by criminologists working at labs at the Oakland Police Department and the Sheriff's Office.

"In some cases, I've called district attorneys offices where they weren't even sure where the rape kits were in storage facilities, let alone how many kits were left to be processed," Alexenko said. "We're working to create a standard model for processing rape kits that can be replicated and applied to other municipalities. Backlogs exist nationally in major jurisdictions such as Houston, Texas and Detroit, that don't have a policy of testing every kit booked into police evidence."

In December, the Sexual Assault Forensic Evidence Registry (SAFER) Act of 2012 was passed by Congress, to require local police departments to account for the number of untested rape kits in their storage facilities, as well as create an online registry that would allow victims to get real-time updates of their rape kit status.

"Every untested kit represents rapists that are still on the streets," said Katherine Hull, a spokesperson for the Rape, Abuse and Incest National Network, one of the largest anti-sexual violence organizations in the country. "The SAFER Act was created with law enforcement and crime labs and is aimed at ensuring we have proper holding of DNA evidence. This is a no-cost bill, and the registry would follow a similar model from Fedex and UPS tracking, where the victim is given non-personally-identifiable number to check on the progress of the rape kit."

The bill provides state and local governments federal funds to audit untested sexual assault evidence and amend the current law to require at least 75 percent of the Debbie Smith Act-- the act that provides federal grants to states to conduct analyses of back-

logged DNA samples -- to be spent directly on analyzing untested DNA evidence or increasing the capacity of labs. The Debbie Smith Act requires \$12.5 million each year for training law enforcement in the identification, collection, preservation and analysis of DNA samples and evidence from 2009-2014.

Sadler hadn't heard of Chin's work in the Bay Area with the Healix foundation, but praised his efforts to help process the backlogged kits. As a rape survivor, she says the value of the work that is being done to end the backlog should be to improve the response to sexual violence. "This is something that needs to be done," she said. "Everyone has a purpose, and I found my niche in teaching others about prevention. We need more people working on addressing different aspects of sexual assault, so that we don't have this backlog ever again and can focus on helping the survivors."

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