



Dismantling the justice silos: Flowcharting the role and expertise of forensic science, forensic medicine and allied health in adult sexual assault investigations

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ABSTRACT

Forensic science is increasingly used to help exonerate the innocent and establishing links between individuals and criminal activities. With increased reliance on scientific services provided by multi-disciplinary (police, medicine, law, forensic science), and multi-organisational in the private and government sectors (health, justice, legal, police) practitioners, the potential for miscommunication resulting unjust outcomes increases. The importance of identifying effective multi-organisational information sharing is to prevent the 'justice silo effect'; where practitioners from different organisations operate in isolation with minimal or no interaction. This paper presents the findings from the second part of the Interfaces Project, an Australia-wide study designed to assess the extent of the justice silos. We interviewed 121 police, forensic scientists, lawyers, judges, coroners, pathologists and forensic physicians. The first paper published in 2013 presented two key findings: first investigative meetings were rare in adult sexual assault cases; second many medical practitioners were semi-invisible in case decision-making with this low level of visibility being due to lawyers, forensic scientists or police not being aware of the role/expertise medical practitioners offer. These findings led to the development of a flowchart model for adult sexual assault that highlights the range of agencies and practitioners typically involved in sexual assault. The rationale for the flowchart is to produce a visual representation of a typical sexual assault investigative process highlighting where and who plays a role in order to minimise the risk of justice silos. This is the second paper in a series of two.

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1. Introduction

Forensic, medical and allied health expertise is relied on increasingly by police and the courts. In sexual assault cases the forensic evidence has the potential to provide more information than just the identification of the suspect. The physical evidence can establish the elements of the crime, assist in reconstructing the sequence of events, establish the identities of the victim and assailant and corroborate or challenge witness statements and alibis [1].

With increased reliance on multi-disciplinary, multi-agency forensic service delivery, the potential for miscommunication resulting in unjust outcomes also increases, especially in serious criminal matters, such as child or adult sexual assault investigations. The more serious the matter, the more likely that multi-disciplinary and multi-agency personnel (Health, Justice, Police, Child Protection, Education, private legal/medical/allied-health) are involved. Inter-disciplinary difference adds to the investigative complexity and increases the risk of vital evidence being missed or miscommunicated, particularly if inter-agency information sharing is problematic or not common. Further, many of these personnel working within different fields will have divergent work practices and differing views on what their role is in a sexual assault investigation, or how and if they should meet during criminal investigations or court trials.

To reduce the risk of unjust outcomes, more emphasis must be placed on how forensic experts communicate with each other and

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with legal and law enforcement agencies. An absence of meaningful and regular communication between forensic science, medicine, law and police was termed by Kelty et al. [2] as the ‘justice silo effect’. This is where practitioners, even within their own organisations, operate in isolation, unaware of the roles and responsibilities of other justice personnel working on the same or similar criminal investigations and trials. Although it is commonplace to think about the criminal justice system as a unified entity with agencies working effectively toward a single purpose and goal [3] research in 2013 found a different scenario, with Australian law enforcement, justice and health agencies/practitioners having a fragmented and often siloed approach to collaboration in both child and adult sexual assault investigations [2].

An example of a “justice silo” occurred in Australia. In 2008, Farah Jama (FJ) was convicted of a rape he did not commit and sentenced to six years imprisonment. No other circumstantial evidence was presented at trial and the jury’s verdict rested on the basis of DNA evidence alone. In December 2009, it became apparent that there was a problem with the original DNA swabs (contamination of the swabs) and a prosecutor from the Victorian Public Prosecutions Office advised the Victorian Court of Appeal in Melbourne that a ‘substantial miscarriage of justice’ had occurred; FJ was acquitted immediately. In 2010, the Vincent inquiry report into the wrongful conviction of FJ was released detailing an extraordinary case of forensic evidence contamination [4]. Although the miscarriage of justice in the FJ case may at first instance appear to be an issue of contamination, the Vincent report also detailed limited information flow between the medical, scientific and law enforcement practitioners involved and that this lack of communication created undue risk of wrongful imprisonment. It became apparent that during the investigation the police involved became concerned with the lack of any other evidence combined with a family alibi for the whereabouts of FJ at the time of the incident. The limited interagency interaction to allay the police officers’ suspicions comprised of phone calls between the police and the forensic laboratory. At no point were any other agencies contacted, even considered, including the forensic practitioners who carried out the medical examinations and collected the DNA samples.

1.1. Background and aim of the research

Cases such as that of FJ discussed above show the importance of ensuring that practitioners and personnel within the criminal justice system do not operate in isolation. One major recommendation from the Vincent [4] inquiry into FJ’s wrongful imprisonment was the need for better interagency communication. This recommendation led to the Interfaces project proposal between the National Institute of Forensic Science Australia New Zealand (NIFS, 2013) and the lead authors of this paper to identify current and preferred forms of communication between police agencies, lawyers, forensic and medical scientists during investigations of adult sexual assault matters and homicide matters. Of note, as this is the second paper in a series of two, it is recommended by the authors that readers read both papers together, please refer Kelty et al. [2].

The rationale was that despite the recommendations from the Vincent inquiry (2010) it was unclear as to how justice agencies should interact so that their information-sharing had a positive impact on the investigation, and that professional boundaries and objectivity as expert witnesses were not undermined. After an extensive search of the literature, no empirical research could be located that had explored *how* forensic science, medicine, law and law enforcement can communicate effectively. The literature that could be located was commentary articles [3,5] arguing for *why* agencies should collaborate; the *how* was not alluded to. One aim

of the *Interfaces Project* was to explore how, or indeed if, information could or should be shared between agencies while maintaining professional boundaries as legal experts.

In 2012 and 2013, the initial results were published [2]. Two key initial findings were that although interagency meetings were routine in homicide cases, they were extremely rare in sexual assault cases. Further, and of concern, was that forensic physicians and nurses were either ‘invisible’ or ‘semi-invisible’ in sexual assault case decision-making, at either the investigative or trial stage. It was found that it was very rare that forensic medical experts shared their expertise in sexual assault cases, even if they had opinion evidence that could assist. The interviews showed that the low level of visibility of forensic medical experts meant that the role they played and the expertise they could offer was neither utilised nor understood by most lawyers, forensic scientists or police.

This paper presents the second part of the Interfaces Project, which explored the forensic and evidentiary process in adult sexual assault cases from initial reporting by an adult victim to the trial preparation stage and developed a flowchart of this process. The research adopted a holistic, systemic approach to examine the role of forensic evidence in sexual assault cases. The flowchart developed begins with first responders and although not exhaustive, examined the range of agencies and processes typically involved in the preparation of a prosecution brief. In the flowchart we particularly addressed a strategy aimed at strengthening law enforcement and judicial responses to sexual assault by identifying critical points at which practices could be improved to enhance the forensic investigation so that forensic evidence adds value to the prosecution brief (where this may be important). In this way, this research focuses on the perpetrator whilst not losing sight of the protection and safety of the victim as the primary concern.

2. Method and materials

2.1. Participants

The participants were 121 practitioners from four professional groups who on a regular basis play a role in the investigation/criminal proceedings of sexual assault and other serious criminal matters. The four professional groups were: forensic medicine, forensic science, law enforcement and law. All 121 participants were interviewed by one or more of the authors. The number of participants in the sample by type of discipline for each professional group can be seen in Table 1. The age range was 21–80 years. The participants were drawn from seven Australian States and Territories: Victoria, Australian Capital Territory,

Table 1
Discipline and number of participants interviewed.

Type of participant	Number
Forensic medicine	
Pathologist	5
Forensic physician/forensic nurse	13
Forensic science	
Laboratory sciences (biology and chemistry)	29
Field sciences (crime scene, ballistics, fingerprints)	19
Law enforcement	
Senior police forensic managers	5
Senior police investigators	14
Law	
Senior judiciary and state coroners	8
DPP and prosecution counsel	9
Legal aid and private bar defence counsel	14
Other services	
Department of health and family law policy advisor	1
Victim services/rape crisis centre personnel	4
Total	121

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