

# Unraveling ABCs of DNA+Rape

**By Sean Black**  
**ICASA staff**

DNA isn't the answer. Often it's the problem.

The double helix genetic compilation known as DNA has become a double conundrum for rape victims in seeking justice in the courtroom. The problem stems from the public's fascination with DNA and crime. It's commonly referred to as the "CSI effect," so named for the trio of popular shows on CBS that solve crimes based on the tiniest fragment of DNA and scientific evidence.

"People expect DNA or scientific evidence in every case and the reality is it doesn't exist in most cases," Sangamon County Assistant State's Attorney Sheryl Essenburg said. "It's very much the exception."

In fact, the Federal Bureau of Investigation reports that DNA is available in only 10-20 percent of cases. Therefore, DNA isn't the silver bullet the general public expects and often it's not even available to be fired.

However, its presence or lack thereof is still a key issue at most jury trials. The jury expects DNA or scientific evidence, and the prosecution must educate the jury during each trial on the hazards of over anticipating the importance of science.

"It's a hurdle that in every jury trial we have to address, especially in child sexual abuse cases," Essenburg said.

Its presence is becoming an issue in adult cases as well. The case involving the Duke lacrosse team became a national debate when 46 of 47 team members were required to submit to DNA testing. When DNA matches were not found, the defense quickly jumped to the conclusion that a rape hadn't occurred.

"That leap is a misunderstanding of what DNA can and can't prove," said Michelle Anderson, a law professor at Villanova University. "DNA can prove sex occurred. DNA can't prove that sex didn't occur."

The DNA conundrum adds to the obstacles against victims achieving justice in the courtroom. It falls in the same category as the beliefs that victims of sexual assault are always physically injured during the assault.

"This focus on DNA evidence seems to be in the historical line with the requirement for physical force," Anderson said. "Rape cases are frequently low priority for prosecutors. They see them as difficult to obtain a conviction. Prosecutors are more concerned about their won-loss record than serving the victim of rape in a community. What is true across

different jurisdictions is that prosecutors and police exercise particular scrutiny with rape victims that is historically excessive and today continues to be excessive.”

### **Why isn't DNA there?**

DNA might not be found in sexual assaults for a variety of reasons. Despite what television portrays, DNA and other scientific evidence isn't waiting patiently to be snatched up and raced away for testing by a lab technician. The majority of victims do not report to the hospital so DNA evidence isn't collected. And if a victim reports to a hospital, time can alter the findings.

“DNA is only available when it has been reported after a few hours, not just DNA but any scientific evidence,” Essenburg said.

Even if DNA is available, it can also be compromised throughout the chain of evidence, which often ventures into weeks and months instead of hours.

“DNA evidence degrades rapidly,” Anderson said. “It is difficult to contain efficiently and handle effectively.”

Also, there are simple reasons for the absence of DNA. The rapist may not have ejaculated inside or on the body of the victim. The rapist may not have ejaculated at all. The assailant may have used a condom during the attack. The assailant may have used an object to assault the victim.

“People don't understand that. They think rape is always a sexual act when it's often about power and controlling someone else,” Anderson said.

### **Stranger vs. Acquaintance**

The greatest benefit of DNA to rape victims comes in stranger rape cases. DNA samples can be used to match with convicted offenders or help string together evidence in a serial rape case. This benefit with DNA and stranger cases produces the unintended consequence of strengthening the rape myth that all rapes are committed by strangers. In fact, only approximately 20 percent of rape cases are stranger cases.

“In general, DNA evidence is going to be focused on stranger rape cases, “CSI” focuses on stranger rape cases. National news focuses on stranger rape cases,” Anderson said. “We have a societal obsession with the man that strikes from behind a bush and drags the victim away to a dark alley.”

If DNA is found in acquaintance rape, the assailant simply states that the sex was consensual, negating the DNA evidence.

### **Adult vs. Child**

The impact of DNA differs greatly depending on the age of the victim. If the victim is a child, DNA evidence can be especially beneficial in the courtroom. However, it's rare that DNA is involved because the reality is that most child victims wait several days or years to inform law enforcement about the sexual violence. Essenburg has never tried a child sexual abuse case that included DNA findings.

"If it's there, particularly in a child case, it's fabulous," Essenburg said. "In an adult victim case, if it's there it doesn't eliminate the issue of consent."

And consent still rattles the cage of most juries. If DNA is found, the assailant claims consensual sex. If DNA isn't found, the assailant claims there wasn't an assault. It comes out to the assailant's advantage in most cases.

"Some people have the assumption that DNA evidence is going to be there and if it isn't, people assume that the victim is lying about the case," Anderson said.

Deciding who is speaking the truth in rape cases is at the crux of most rape verdicts.

### **Words vs. Science**

Perhaps the most disheartening aspect of the DNA evidence is that it is another method in which the voice of victims can be silenced in the courtroom.

"Victim testimony in rape cases has never been a slam dunk for women," Anderson said. "Historically prosecutors want bruises, broken bones, evidence of physical force. The narrative of he said, she said is all about rape cases. Her voice has never meant as much."

In a time when too few rape cases are prosecuted, the lack of DNA can provide an excuse for not prosecuting a case. Prosecutors and the public need to remember that rape cases were tried prior to DNA evidence and still need to be tried with or without DNA support.

It's important to remember that DNA is a single part of the evidence collection. If the victim goes to the hospital, a multitude of evidence is collected during the forensic medical examination (rape kit) that is performed by medical personnel.

"The media so plays up the scientific wonder that some people forget that it is who you believe," Essenburg said. "We have to remember as prosecutors and jurors need to understand that it's going to be there in some cases and in other cases it's not going to be there."

### **What to do?**

As usual in discussing rape or myths about rape, education will play a key factor in turning the tide about what DNA can and can't do for rape victims.

“The work to publicize DNA evidence is really helpful but it’s not going to have the impact that CSI will,” Anderson said. “People need to challenge the shows ... They need to put pressure on the popular shows to talk about these kinds of issues.”

Pressure to understand the good and the bad about DNA evidence and its affect on rape victims.