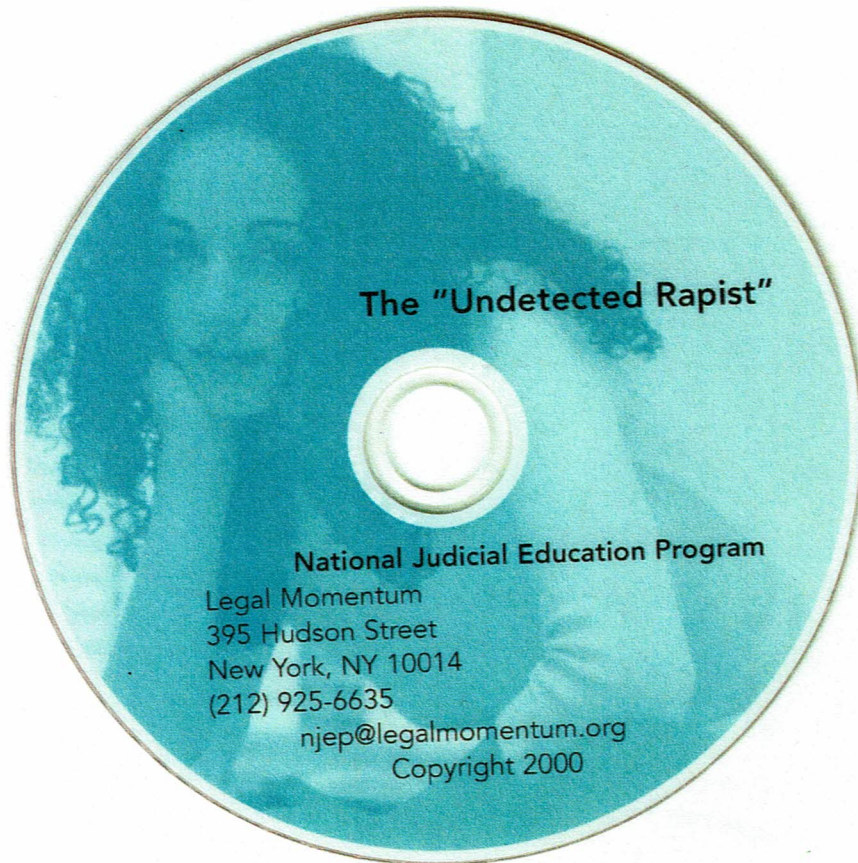


Exhibit I



https://www.realclearpolitics.com/articles/2018/03/05/discredited_sex_assault_research_infects_us_legal_system_136423.html

Discredited Sex Assault Research Infects U.S. Legal System

COMMENTARY

By [Linda LeFauve](#) & [Stuart Taylor Jr.](#)

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When a toxin enters a biological ecosystem, its effect is magnified as it moves up the food chain. Even if it can be cut off at the source, the ever-widening distribution of its increasingly harmful form can cause problems for decades.

Misinformation functions in a similar fashion, gaining traction as it's repeated by increasingly high-profile individuals who venture ever further from the source material. In this manner, distortion about the facts of sexual assault has affected the training of judges, prosecutors, and other law enforcement officials. It is how misleading assertions become embedded in criminal and military law.

This is a story of how a theory without merit, derived from highly questionable statistics, imperils the most basic tenets of due process and risks turning every unproved accusation into a verdict of guilt.

The example discussed here began with a small study by an associate professor at a commuter college in Massachusetts. The 12-page paper describing the study barely created a stir when it was published in 2002. Within a few years, however, the paper's principal author, David Lisak, a University of Massachusetts-Boston psychologist, began making dramatic statements that extrapolated far beyond the study's conclusions. He created, virtually out of whole cloth, a theory that "undetected" serial rapists are responsible for 90 percent of assaults on college campuses, that they premeditate and plan their attacks, and that they are likely to have committed multiple acts of violence.

When speaking on campuses, to the military, and to law enforcement, Lisak started showing a highly disturbing video that he claimed was based on the transcript of an actual interview with a campus rapist to whom Lisak gave the name "Frank." The authenticity of the video has been [seriously questioned](#), raising grave doubts about Lisak's contention that it illustrates the typical campus perpetrator—in his view, an unrepentant sociopath who cannot be reached or educated.

A news search for mentions of Lisak finds only a single one prior to 2009, in which he revealingly [opined](#) in an urban policy magazine about the Duke lacrosse rape hoax. He was interviewed again by CBS News in November 2009 about non-stranger rapes. He increasingly became the draw at conferences on sexual assault and his calendar filled with campus presentations. The media began to fawn over him, whether due to the drama of the notion of campuses being stalked by serial rapists or to the failure of campus administrators, blinded by the appeal of an identifiable villain, to point out the disconnect between Lisak's portrait and their own observations. (A sociopath responsible for the majority of assaults can be removed from campus. The reality of [college drinking](#) and the [still-developing adolescent brain](#), and the relationship of both to behavior fueled by poor judgment and peer pressure, provide no such easy fix.) By the end of 2010, Lisak's status was on the rise. Within a few years, his was arguably the most high-profile name on the topic of sexual assault.

Lisak's serial-rapist theory was reflected in the 2011 letter in which the Department of Education ordered universities to adopt specified, guilt-presuming disciplinary procedures for alleged sexual assaults and, in the process, gave credence to the probability of repeat offenders. Lisak's

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theory also found its way into a January 2017 [report](#) by the White House Task Force to Protect Students From Sexual Assault, which simultaneously criticized a more recent, nationally representative [study](#) that had been subject to far more rigorous statistical analysis. Lisak was quoted so often as to make him a central figure in the pseudo-documentary "The Hunting Ground." As his celebrity grew, the gap between documented facts and his status as an expert became almost inconsequential.

Criticism did eventually catch up to David Lisak. His serial predator model of campus rape has been compellingly debunked by [scholarly researchers](#) and [well-regarded publications](#), including [investigative articles](#) and a [book](#). His claims regarding the psychology of campus perpetrators were revealed to be based on [nonexistent interviews](#). A key component of his presentations, an "unedited transcript" of an interview with a college rapist presented as timely and typical was revealed to be not only highly edited but based on an interview from three decades ago with a subject who was clearly an atypical outlier -- as documented by Lisak's [own publications](#).

A 2008 paper, in which he linked "undetected serial rapists" with a propensity to commit serial and "crossover" acts of violence such as interpersonal attacks unrelated to sex, was shown to have provided [no basis](#) for such a generalization. His assertions, allegedly supported by a [study](#) he co-authored in 2010, that false accusations of sexual assault are exceedingly rare, [have been shown](#) to [violate basic math](#) by counting as true cases that didn't qualify as sexual assault, had insufficient evidence to make a determination, or were referred for prosecution but about which the outcome was unknown.

As for Lisak's vague statements about having interviewed ["hundreds"](#) of serial rapists (occasionally styled as "thousands" when others talk about him), in truth no evidence exists that Lisak has interviewed *any* "undetected rapists," serial or otherwise, since his dissertation research 30 years ago.

His claimed years of research turned out to be a handful of actual research publications, reviews full of editorializing about others' research, rehashing of the dissertation he completed in 1989, and a website that deceptively merges that dissertation's 1980s-era research on 12 college students with unrelated data from the 2002 paper on repeat offenders.

Yet all of these devastating exposés have barely dented Lisak's popularity. In spite of his own warning in that 2002 paper that the "non-random nature of the sampling procedures" precludes interpreting the data "as estimates of the prevalence of sexual and other acts of violence," he has built a career doing exactly that. His original research—the ostensible basis of his expertise—fits on a single page of his curriculum vitae. In spite of this limited output, he continues to be a featured speaker and forensic witness based in large part on the very distortions that have been so convincingly exposed.

Were the damage wrought by David Lisak's popularity confined to his college-circuit road show, there might be some hope that his toxic influence would be worn down by the critical thinking ostensibly prized by the academy.

Instead, that has not happened. The list of invited presentations, workshops, and media appearances in which he has hawked his unsubstantiated theories runs an additional 40 pages on his curriculum vitae. Among the most worrisome aspects of Lisak's presentations and workshops is how they appear to be gaining influence among professionals close to the investigation and adjudication of sexual assault. His debunked serial predator theory and wildly extrapolated statistics on the false-accusation rate form the core of the training materials he has developed—and in some cases sold to law enforcement, prosecutors, judges, and the military.

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Whenever Lisak presents his serial predator theory—invariably accompanied by his claims about the low rate of false accusations of rape—his toxic influence spreads. A small sampling shows its range:

- S. Air Force. *Special training for the Office of Special Investigations: The Behavior and Characteristics of Non-stranger Rapists: Implications for Investigation and Prosecution.*
- Joint U.S. Navy and Marine Corps Mobile Training Team conference, Naval Air Station Jacksonville. *The Undetected Rapist.*
- Delaware Judicial Education Retreat. *Sex Offenders: Myths and Realities.*
- S. Marine Corps. Special training for JAG officers: *How Predators Pick Their Prey.*
- California Administrative Office of the Courts. *Handling Sexual Assault Cases: Sex Offender Characteristics and Evaluating Evaluations.*
- Wisconsin Office of Justice Assistance Statewide Sexual Assault Response Team Conference. *False Reports of Rape: What Do the Numbers Tell Us?*
- Special Law Enforcement Training, State University of New York. *The Behavior and Characteristics of Non-stranger Rapists.*
- Prosecuting Attorneys Association of Michigan Sexual Assault Summit. *Rapists: Myths and Realities.*

Again, were the damage limited to misinforming attendees, it might not be so large as to warrant concern about the damage wrought by Lisak’s influence. Unfortunately, that’s not the case, either. For example:

- A [project](#) funded by the U.S. Department of Justice compiled a list of 25 “facts” that judges who attended seminars offered by the National Judicial Education Program—a company for which Lisak has served as a faculty member and that continues to sell materials he created—said they wished they’d known before presiding over sexual assault cases involving adult victims. Although the fact list includes some reasonable and factual assertions, it also includes Lisak’s unfounded claims about serial predators and false reports. As part of its curriculum, NJEP advises judges to use voir dire to gauge prospective jurors’ familiarity with these “facts.”
- Especially frightening was one judge’s conclusion that “when evaluating sex offender risk, actuarial assessments are more accurate than clinical assessments.” That is, a psychologist’s judgment of the danger the defendant represents should take a back seat to the statistical likelihood, based on Lisak’s “research,” that the defendant has committed other acts of “undetected” violence.
- Lisak’s misinformation has been passed on to law students, practicing attorneys, and judges through a number of influential sources, including [Cornell's Law School](#), the [Judicial Education Center](#), the [Florida Court System](#), the [National Center for State Courts](#), and the [American Bar Association](#). In every case, the benefit is to the prosecution.
- Even the [National Academy of Sciences](#) has used Lisak’s unsupported serial rapist theory to weigh in on “police mishandling” of rape accusations that “has allowed serial rapists like those in Lisak and Miller’s research to perpetrate again and again without detection.”
- A 2016 [amicus brief](#) filed with the Supreme Court of Ohio made a similar charge but upped the ante by invoking Lisak’s (equally unsupported) claim that these serial offenders had a propensity for other violence as well.

Most troubling of all, Lisak’s material is being codified in law enforcement policies, legal precedents, and judicial guidelines at the local, state, and federal levels.

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The [Sexual Offense Bench Guide](#) for judges in the state of Washington, for example, draws liberally from Lisak's 2008 publication "Understanding the Predatory Nature of Sexual Violence." His claims have been similarly incorporated into [New Mexico's Sexual Assault Bench Book](#), the [Tribal Court Judges Bench Book](#) on sexual assault, the [Missoula County Attorney's Office Policy and Procedure Manual](#), the [Pennsylvania Crimes of Sexual Violence Benchbook](#), [New York State's Judicial Symposium](#), [Wisconsin's Prosecutor's Sexual Assault Reference Book](#), and the [Judge Advocate General Corps Criminal Law Desk Book](#).

The relationship between prosecutors, judges and the juries who will ultimately arrive at verdicts in criminal trials is further tainted by recommendations that prosecutors and judges incorporate into the jury selection process: namely, Lisak's claim that false accusations are rare and his unsupported theory about serial offenses.

JAG guidelines for prosecutors, for example, advise that "myths" about the frequency of false reports be challenged "directly, in voir dire and in argument." Prospective jurors whose information does not align with the (inaccurate) information provided in guidelines influenced by Lisak could then be dismissed and/or a seated jury could be told of the supposedly "true" facts. Recommendations from the [NYU School of Law](#) related to prosecuting sexual assault invoke Lisak to justify investing resources to pursue less credible cases because each represents "an opportunity to catch a serial rapist." Prosecutors can, the recommendations continue, "uncover juror rape myth acceptance" via voir dire and "educate the jury pool about sexual assault."

Once so codified in judicial and law enforcement guidelines, this toxic mixture of misinformation is extremely difficult to dislodge. Skewed jury pools, erroneous decisions at trial, and the weight of distortion have real consequences. A judge in Montana, for example, [denied](#) a request to have a case dismissed on the grounds of a Missoula police department requiring officers to presume the guilt of the accused when investigating sexual assault. The judge stated that she based her ruling on Lisak's (baseless, and thus misleading) testimony about the low rate of false reports. When such decisions are made, when presumptions of guilt are part of the training of judges and prosecutors, or reflected in jury instructions, innocent defendants are put in harm's way.

Even those ostensibly in the business of impartial news coverage have been tainted by their own guidelines, as when [the media](#) have been fed the same misinformation, masquerading as insight. Their contribution to the problem is further amplified when they are further [advised](#) not to use the phrase "rape allegation" because "allegation is not a neutral term and strongly implies doubt," and they fail to see that the alternative suggested—"reported rape"—implies an act that has, indeed, happened, distinguished only by the fact that it is on record.

Where does that leave those for whom accuracy, integrity, and truth matter?

The unfortunate reality is that the greatest potential harm of the current environment accrues to the accused. Therefore, defense attorneys already burdened with a state of affairs in which "accused" defaults to "perpetrator" and "accuser" defaults to "victim" need to equip themselves to take on not only expert witnesses citing bogus "research" but also the underlying studies.

This is not an easy assignment, but the use of good lawyering to dismantle bad "research" can be powerful, and good courtroom theater as well. When faced with a Lisakian claim that "only 6 percent of rape allegations are false," the defense attorney can ask what percent, then, are true? David Lisak himself would have great trouble answering that question without being exposed as a statistical manipulator, because his writings have never even addressed it. Rather, he has used misleading language to imply that almost all rape accusations have been proven true. Indeed, a good defense lawyer could fairly ask: "Isn't it a fact, Mr. Lisak, that the number of rape

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accusations that have been proven false may well be larger than the number that have been proven true?"

When the assertion about Lisak's serial sociopaths is repeated, the defense attorney can point to the fact that Lisak's study never established a single serial crime, nor that any of the rapists were undetected, and to Lisak's own statement that his findings cannot be generalized beyond the limited scope of a single study. When Lisak's "interviews" are invoked, the defense attorney can ask: How could anyone interview survey participants whom he never met and whose identities he never learned? Weren't the only interviews Lisak actually did those with the 12 subjects of his three-decades-old dissertation research? And were not the highly impulsive subjects described in his dissertation wholly unlike the portrait he later painted of sociopaths with excellent impulse control who premeditate and plan their crimes?

Lisak's claims are wrong and the experts who tout them are vulnerable when asked direct questions. The discrediting of Lisak must become part of the court record, in case after case, before the far more difficult task of correcting the effects of his bogus claims on criminal justice policies can be accomplished.

The focus here has been on one particular—and particularly problematic—conveyor of misinformation. David Lisak's high profile and willingness to depart from even his own published papers in service of an agenda makes him the embodiment of the attack on due process. But Lisak is not alone. He has recently been joined by other "experts" straying even further afield from verifiable data and often in [direct contradiction](#) of known science.

The difficulty of fighting the toxic distribution of misrepresentation and statistical sleight-of-hand is partially a function of high-profile purveyors and enablers. The codification of myths in law enforcement procedures; in the training of prosecutors and judges; and in policy at the town, county, state, and federal levels all but guarantees insidious and continuous regeneration. The roadmap such myths provide is wrong but concrete, offering up sociopathic villains in place of a continuum of offenders, permission to presume guilt in the absence of evidence, and a philosophy that accusers not only don't lie but are never mistaken. Few combinations are more immune to objective inquiry than fear of monsters and the comfort of easy answers for taking them down.

But objective inquiry is called for and those who put obstacles in its way must be confronted. Neither law enforcement nor the courtroom should be a conducive environment for misinformation. It should not be intentionally introduced or passively tolerated. For now, a disproportionate burden will fall to defense attorneys. The battle against misinformation starts one case at a time.

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