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Forensic Exams for the Sexual Assault Suspect

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One source of evidence that is critically important but all too often overlooked in a sexual assault investigation is the suspect examination. In my experience, I have found that most law enforcement agencies have failed to establish appropriate policies and procedures for obtaining comprehensive forensic examinations for sexual assault suspects which is unfortunate, given the potential for recovering probative evidence from the body as well as the clothing of suspects. The purpose of this Promising Practices article is to make the case for the importance of suspect examinations, to explore some of the reasons why they often are not done, and to provide concrete recommendations for overcoming these barriers and using suspect examinations effectively in your community.

The importance of suspect exams.

When evaluating potential sources of evidence, we as law enforcement professionals often focus on anything that might have transferred from the suspect to the victim; thus, forensic examinations of the victim are seen as critically important. However, we need to keep in mind that any evidence that could potentially be transferred from the suspect to the victim may also be transferred from the victim to the suspect. Therefore, depending on the type of contact involved in a sexual assault offense, the suspect's body may actually be a better source of probative evidence than the victim's.

- For example, in the case of a digital penetration of the victim's vagina, the suspect's fingers will often be the best source of probative evidence. This can even be true if the suspect has bathed since the sexual assault, because most people do not routinely scrub underneath their fingernails with hot soapy water.
- As another example, if the suspect forced his penis into the victim's mouth during the sexual assault, his penis may be a richer source of evidence than the victim's mouth.

To highlight this point, consider a study conducted by Isacc T. Caain, entitled: "*The Use of Physical Evidence in the Investigation and Prosecution of Sexual Assault Cases.*" (This study was submitted as a Master's Thesis in Forensic Sciences to National University in July of 2002). The research was conducted while I was supervising the Sex Crimes Unit at the San Diego Police Department, and it involved analyzing the findings from 77 sexual assault cases that received laboratory analysis from our Forensic Biology Unit between 1998 and 1999. Results of this study revealed the following:

- In cases involving an adolescent victim, 44% of the suspect's rape kits that were examined by a criminalist identified the victim's DNA. In fact, DNA analysis of epithelial cells found on penile swabs of the known suspect were the most common pieces of suspect evidence associated with victim identification.

- In the cases with an adult victim, as many as 30% of the suspect's rape kits that were examined by a criminalist identified the victim's DNA. Again, DNA analysis of epithelial cells found on penile swabs of the known suspect were the most common pieces of suspect evidence associated with victim identification.

Clearly, any evidence from the suspect's body that establishes the identity of the victim will be important in the investigation and prosecution of sexual assault. It is therefore surprising that so few law enforcement agencies routinely collect forensic evidence from the body of the suspect.

The clothing of the suspect

Equally surprising is the frequent failure to seize the suspect's clothing, which again could be a terrific source of probative evidence. In many cases, the clothing worn by the suspect during the sexual assault is still available and – depending on the specific case history and the time since the assault – it is often a better source of evidence than the forensic examination of the victim. All of these potential sources of evidence should therefore be considered when “thinking outside the box” during a sexual assault investigation. Turning again to the Caain study:

- When the suspect's clothing and other crime scene evidence such as condoms, bottles and tissue, were examined, 80% of the items examined by a criminalist included the victim's DNA profile and 20% included the suspect's DNA profile.
- Of the 51 adult cases, 16.7% of the items examined by a criminalist included the suspect's DNA profile and 50% included the victim's DNA profile.

Clearly, important evidence can often be obtained from the body and clothing of a suspect in a sexual assault case. This is especially significant because so many people think of sexual assault cases as not having physical evidence – that they are simply a question of “he said, she said.” In many cases, however, physical evidence can be obtained if we look in the right place.

It's not just about DNA identification

Yet the importance of the suspect examination is not solely based on the potential for documenting the victim's DNA for identification purposes. Depending on where the victim's DNA is found on the suspect's body, it may provide a better idea of the specific acts that were involved in the sexual assault (e.g., penile-vaginal penetration, digital penetration, oral copulation). This type of evidence may be particularly helpful with very young victims, or with victims who are under the influence of drugs or alcohol, because they may not recall or may not be able to articulate exactly what happened to them. Evidence of the victim's DNA on the suspect's body can also be important in cases involving multiple perpetrators, where the victim knows that a suspect participated in the assault but is not sure if he penetrated her.

Even beyond DNA evidence, the suspect examination is important because it can provide documentation of the suspect's clothing, appearance (e.g., shaven or unshaven), physical

anomalies, tattoos, piercings, and other characteristics that may become important later on during the course of an investigation and prosecution (thanks to Assistant District Attorney Cathy Stephenson in San Diego, California for these ideas). It can also corroborate information that the victim provides about sensory experiences, such as the suspect's smell (e.g., aftershave, cigarettes, body odor, bad breath). Evidence from the suspect examination can also provide other types of information that "fill in pieces" of what happened before, during, or after the sexual assault. For example, debris from leaves could be found on the suspect's body that came from the bushes outside the victim's home, or paint chips could remain from the suspect's work earlier in the day. A thorough suspect examination certainly demonstrates diligence on the part of law enforcement investigators and establishes a critical focus on the suspect – both of which are important for juries considering the evidence in the case (thanks to Senior Deputy Prosecuting Attorney Patti Powers in Yakima, Washington for these ideas).

Yet one of the most important reasons for conducting a suspect examination is to document evidence of force, resistance, and injury. As you know, most sexual assault cases result in a consent defense these days – even when the suspect is a stranger to the victim. Therefore, biological and trace evidence may not be as critical for establishing the identity of the suspect as one might initially think. Yet many investigators assume that this means a suspect examination will not be particularly useful, and that is not necessarily true. A suspect examination may still be extremely useful in a consent defense case, because the evidence that is obtained may corroborate the victim's (and/or suspect's) account of events. The evidence may also document force or injury, which is obviously critical for overcoming a consent defense. In fact, any time a victim describes a great deal of force involved in their sexual assault – or when victims state that they bit, kicked, or scratched the suspect – injuries to the suspect might still be identified and documented for days afterward.

Clearly, the decision to obtain a suspect examination should not be based solely on an understanding of how long trace and biological evidence might be available on the suspect's body. In the majority of sexual assault cases where consent is going to be the primary issue, any evidence that provides corroboration of the victim's account and documents force or injury is absolutely critical. As a result, the determination of whether or not to obtain a suspect examination can only come from a careful consideration of the case history. Investigators must think through the facts of the case and determine what kinds of evidence might prove useful – and for what purposes. At a minimum, I can recommend that a forensic examination of the suspect should be conducted any time (1) the suspect is arrested shortly after the sexual assault, (2) the law enforcement investigator believes that the suspect has not bathed since the sexual assault (however, keep in mind that depending on the type of assault, an exam may still be warranted even if the suspect has bathed), or (3) if there is reason to believe there might still be evidence of injury to the suspect.

Barriers to suspect exams: Lack of research and feedback

So, assuming for the moment that I've convinced you of the importance of suspect examinations, let's explore some of the reasons why they are not routinely conducted in many communities.

One of the barriers I see is that community professionals don't always appreciate how important forensic evidence is for the successful investigation and prosecution of sexual assault. In recent years we have seen increased understanding among many community professionals for the importance of forensic evidence gathered and documented during the victim's examination. However, this has not typically extended toward seeing the importance of suspect exams.

As you certainly know, most Sexual Assault Response and Resource Teams (SARRTs) have been established to provide victim-centered services, including appropriate medical care and the identification and collection of potential forensic evidence from the victim. This certainly reflects an increased appreciation of the importance of forensic evidence gathered from the victim. Yet there were many times during my law enforcement career when I was frustrated with the lack of attention to the forensic part of the medical forensic examination.

- On the one hand, victims who were examined by health care providers in my community typically received the most competent and compassionate medical care available.
- At the same time, I observed a serious lack of understanding among community professionals regarding how and when rape kits were processed by the crime lab. Many did not understand why there was and (in many jurisdictions still is) a backlog of DNA evidence in our property rooms and crime laboratories.

This makes it clear to me that we still have a long way to go before we fully appreciate the role that forensic evidence can play in these cases. If community professionals do not yet understand the role that forensic evidence gathered from the victim's examination can play in successful investigation and prosecution of sexual assault, it is unlikely that they will recognize the critical role that could be played by forensic evidence gathered from the suspect's examination.

Further complicating matters, we are still waiting for the type of research that is needed to determine which types of evidence are typically found from which sources – and how long after the sexual assault it can be recovered. This research would need to be conducted by evaluating findings from the crime lab and comparing them with the unique characteristics of sexual assault cases. It would need to include the analysis of case variables such as:

- The type of assault (e.g., penile/vaginal rape, sodomy, oral copulation, penetration with a foreign object, including digital penetration, and attempted sexual assault)
- The time delay between the sexual assault and the forensic examination
- Hygiene activities of the victim and/or the suspect
- The source of the probative evidence (e.g., crime scene evidence such as foreign objects, condoms, clothing, oral swabs, internal vaginal swabs, external vaginal swabs, or swabs taken from the victim's breast or neck based on her verbal history of the activities involved in the assault).

Like the Caain study, the findings from this research would help us to determine which types of evidence are found from which sources and for what length of time after the sexual assault. With such research findings in hand, we would then be much better equipped to provide guidelines for the forensic examination (of both victim and suspect) that are relevant to the current state of forensic science. In many communities, it is difficult to establish or revise policies regarding forensic evidence collection because we do not know the answers to these questions. Until such research is available, it is all too easy for communities to continue to collect forensic evidence “the way we’ve always done it.” But my opinion is that we cannot wait until we have all the answers before we improve our collection procedures. We need to establish policies and protocols for conducting forensic examinations of the victim and the suspect – and seek feedback from our crime laboratories regarding what evidence they find, and from which sources.

Other barriers to suspect exams

In addition to the lack of research and feedback, additional barriers also get in the way of routinely conducting suspect examinations in many communities. In many jurisdictions, for example, there are no protocols in place for trained forensic examiners to conduct suspect examinations. I believe there are a number of reasons for this, and a number of factors to consider when developing such policies and procedures.

- First, the programs and facilities that were established to provide medical forensic examinations for victims were designed to be compassionate and victim-centered. As a result, their staff (e.g., SANEs, SAFEs) typically do not want to have suspects – often in handcuffs – within the same environment as sexual assault victims. Even if the suspect is not the suspect in the sexual assault victim’s own case, just having suspects in the same location may be very upsetting to a crime victim. Therefore, while I recommend that suspect exams be conducted by trained examiners, it may not be ideal to have these exams conducted at the same facility as the forensic examinations of victims. For example, one scenario is for the victim’s exam to be conducted in the SANE facility or hospital while the suspect’s examination is conducted at the police department.
- In addition to the emotional distress it may cause victims, any facility that conducts both suspect and victim forensic examinations will significantly increase the potential for cross contamination of the evidence. Therefore, if the victim and suspect are examined in the same facility, or possibly even by the same examiner, policies and procedures must address the steps that will be taken in order to prevent such cross contamination. In fact, any community that is expanding the role of forensic examiners to conduct exams with suspects as well as victims will need to ensure that they receive sufficient training to do so. Clearly, many of the issues are very different for suspect exams yet many forensic examiners have only received specialized training in how to conduct victim exams.
- Another reason why suspect exams are not routinely conducted in some communities is that they are expected to be performed by crime lab personnel or law enforcement officers. In some jurisdictions, this has actually become a labor issue because officers and crime lab personnel do not believe it is appropriate for them to do such an intimate

examination of the suspect. I actually share this concern. To obtain the best forensic evidence possible, I believe that suspect exams must be conducted by examiners with specialized training and clinical experience. In most cases, this will be a health care provider, not a law enforcement officer or employee of the crime lab.

- Of course, some law enforcement agencies might be reluctant to use trained forensic examiners to conduct suspect examinations because it is more expensive than using their own personnel. This clearly reflects a concern with the prioritization of resources, and any law enforcement agency that is serious about investigating and prosecuting sexual assault must take a hard look at this question. While it is clearly less expensive to use law enforcement personnel to conduct suspect exams, the evidence that can be collected is extremely limited when compared to the documentation and evidence that can be collected by a trained forensic examiner with specialized expertise in this area.
- Another barrier is that many communities are currently experiencing a shortage of nurses. As a result, they are often unable to provide forensic examiner coverage around the clock even for victims – let alone suspects. Having forensic examiners conduct suspect examinations would stretch these limited nursing resources even further. Any effort to conduct suspect exams must therefore take into account alternative ways of addressing the reality of a nursing shortage that may exist in the community. For example, the City of San Diego Forensic Examiner program utilizes both LVN's and paramedics. Both have the ability to check for vital signs, document injuries, collect hair samples, swabs, and draw blood. Clearly, protocols that are developed must be realistic and based on the resources that currently exist in your community.
- In many communities, there are still debates about who is going to pay for forensic examinations – even with sexual assault victims. I believe this stems from a failure to recognize the victim's forensic exam as evidentiary (rather than solely medical). To the extent that the forensic examination of a sexual assault victim is an evidence collection procedure, I do not believe it should be treated differently than other law enforcement evidentiary procedures. In other words, whoever pays for other evidentiary procedures (such as processing a bank following a robbery or conducting a traffic accident investigation) should also pay for the forensic exam of a sexual assault victim. In a sexual assault case, the body is a crime scene -- whether it is the victim's or the suspect's. However, any community that fails to see the victim's forensic exam as evidentiary will most likely also fail to recognize that the suspect's examination is evidentiary as well. Clearly, payment procedures should be in place for law enforcement agencies to pay forensic examiner programs to conduct forensic exams with both victims and suspects. (For more information on payment issues and the implications of the 2005 re-authorization of the Violence Against Women Act known as VAWA 2005, please see the *Promising Practices* article from our e-newsletter dated June 26, 2006 (at http://www.mysati.com/enews/Jun2006/enews_062606.htm).

Lack of standardized guidelines, kits, and forms

Beyond such philosophical issues, some of the barriers to suspect exams are more concrete. For example, the *National Protocol for Sexual Assault Medical Forensic Examinations* that was published in September 2004 (by the Office on Violence Against Women, U.S. Department of Justice) does not even address the topic of suspect examinations. In addition, very few states provide any sort of standardized guidelines regarding forensic examinations for suspects.

Even fewer states provide forms for documenting the suspect examination, similar to the ones that are used for the examinations of victims. Clearly, statewide guidelines and standardized forms provide helpful guidance on how to handle suspect exams. They also offer the potential to increase consistency in the practices used from jurisdiction to jurisdiction. California and North Dakota are exceptions, because both have standardized guidelines and a form that is used for forensic examinations of sexual assault suspects. These materials are available at: [CA OCJP Form 950](#) and [North Dakota Sexual Assault Evidence Collection Protocol](#).

Similarly, very few communities have created evidentiary kits for the suspect forensic examination. Some exceptions include San Diego (California) and (South Carolina) which have developed their own evidentiary kits for use with suspect examinations. The SDPD crime lab puts together their own kits whereas the South Carolina State Crime Lab contracts with a private company ([Tri-Tech Inc.](#)) to produce custom kits. (Another private company that sells evidentiary kits for the suspect examination is [Lightning Powder Company, Inc.](#)). Some jurisdictions use the same kit for both victim and suspect examinations, like the state of North Dakota does. Unfortunately, one of the problems in some communities is the lack of communication between forensic examiners, law enforcement investigators, and crime lab personnel – so the kit that is used for suspect examinations may be missing elements that are necessary for thorough evidence collection.

Clearly, some of these barriers are easier to overcome than others. Some are more philosophical in nature and require cross-disciplinary dialogue and training to better appreciate the importance of suspect exams. Others are more concrete and can be addressed with collaborative effort to develop policies, protocols, and resources. As described above, these resources may include standardized guidelines, forms, and evidentiary kits for suspect examinations. It is therefore important to take stock in your community, to see where the barriers lie, and then design a strategy for overcoming them. In the Appendix of this article, I will also provide some materials that you might find helpful as you work through this process.

Designing a protocol for conducting suspect examinations

To summarize, I believe that law enforcement policies and SARRT protocols must ensure that a forensic examination is conducted as soon as possible in any sexual assault case where:

- (1) The suspect is arrested shortly after the sexual assault;
- (2) The investigator believes that the suspect has not bathed since the sexual assault, or;

(3) The history suggests that there might be evidence of injury on the suspect.

(As a side note, suspect examinations can also be extremely valuable for many other types of crime such as homicide, child abuse, robbery, domestic violence, etc. Therefore, much of the information in this article will be equally relevant for those types of crimes as well.)

In addition, the clothing worn by the suspect during the sexual assault is often still available at the time of the law enforcement investigation, regardless of how much time has passed. As I have already noted, the suspect's clothing may be a better source of evidence than the forensic examination of the victim, depending on the specific case history and the time since the assault. As a result, community protocols can also highlight the need to collect this critical evidence without respect to any particular timelines. If the clothing that the suspect wore at the time of the sexual assault (and/or immediately afterward) is available, it should be collected as evidence. To provide guidance on the collection of clothing as evidence, please see the documentation form that is provided in the Appendix.

Legal requirements for a suspect forensic examination

The next question that people typically ask me is how to get the legal authorization to conduct a suspect examination. Essentially, there are three ways that a suspect examination may take place: (1) The suspect may consent to a forensic examination; (2) An examination may be conducted incident to an arrest, or; (3) A warrant or court order can be obtained. Even in situations where a full examination cannot be conducted, law enforcement personnel can still often obtain a mouth (buccal) swab of a suspect. I'll address each of these in turn.

First, let's talk about suspect consent. It is clear that law enforcement officers are allowed by law to use the consent of the suspect as a basis for obtaining a forensic examination. However, some law enforcement agencies have policies prohibiting this practice. Therefore, law enforcement professionals must check with their own Department, as well as the prosecuting attorney's office, to learn about the protocol in their community.

Perhaps surprisingly, most suspects will in fact consent to a forensic examination when asked. Of course, investigators must be careful that the consent is not coerced as it may be challenged by the defense in court. If this option is chosen, I strongly recommend that the suspect's consent to the forensic exam be obtained in writing. Other precautions can also be taken such as:

- Having an investigator offer the examination (rather than an officer in uniform with a visible weapon);
- Limiting the number of law enforcement officers present at the time of the request, and;
- Making sure that the suspect understands that he is not in custody, that he is free to leave at any time, and that he is free to stop the forensic examination or refuse any part of the forensic examination at any time.

All of these issues will be examined by a judge if the suspect's consent is challenged.

The second way that a suspect examination can be obtained is incident to an arrest. In some jurisdictions like California, law enforcement agencies are allowed to obtain a complete forensic examination of the suspect incident to an arrest. In these jurisdictions, the courts have allowed the practice based on exigent circumstances – because the evidence may no longer be available if too much time elapses. Although we rarely had a problem in California with suspects being combative during the forensic examination – in fact, most were actually quite cooperative – we were even allowed to use force to obtain the suspect examination as long as we did not shock the conscience of the court.

In most of the jurisdictions I have trained in, however, law enforcement personnel are required to obtain a search warrant or court order in order to conduct a suspect exam; this is the third way it can be obtained. Although this clearly adds another step to the investigative process, and can sometimes be seen as unnecessarily time consuming, I do not believe it should stand in the way. As I have said, the evidence obtained from a suspect examination can be extremely valuable and therefore should not be overlooked when conducting a sexual assault investigation. Therefore, in those jurisdictions where a warrant or court order is needed, I recommend that all officers have a template available on their computers for easy access. To help with this, I have provided a sample template as an Appendix to this article.

- Keep in mind, however, that any time a warrant is issued for collection of forensic evidence from a suspect, the issuing judge typically sets applicable time limits. The investigator will then need to present the court order or search warrant to the forensic examiner.
- The search warrant will also state exactly which samples have been authorized by the judge for the examiner to collect. The items explicitly stated on the search warrant are the only samples that can be obtained during the suspect examination. For this reason, the investigator should carefully articulate as many samples as possible that can be supported by the probable cause alleged in the warrant. For an example of a search warrant and supporting affidavit, see the Appendix.

Before concluding this section on legal requirements, I want to note that even in those cases where a full examination cannot be conducted with a suspect, it is often still possible for law enforcement personnel to obtain a mouth (buccal) swab for DNA. In fact, I believe that all law enforcement professionals should be encouraged to carry mouth swab kits in the field.

Remember, however, that the collection of evidence from a mouth swab is governed by the same requirements and exceptions described above. Mouth swabs can be used to collect a DNA reference sample with suspects, and they can be used by any law enforcement professional who has received training in how to collect, store, and transfer them. They can be particularly useful because suspects often consent to providing mouth swabs to law enforcement personnel in the field, in order to avoid being transported to a medical facility. The procedure is also much less intrusive than drawing blood. As a result, many law enforcement agencies actually prefer mouth swabs over a forensic examination of the suspect, because medical personnel are not needed and

it is therefore less expensive and time consuming. On the other hand, a mouth swab can only be used to obtain a DNA sample and not the other types of forensic evidence I have talked about in this article, so I see it as a valuable tool – but not one that replaces the need for a full forensic examination of the suspect when appropriate. For information on how to use mouth swabs, detailed guidance is provided in the Appendix.

Components of a suspect examination

To address the issue regarding whether police personnel are qualified to conduct suspect forensic examinations, it is important for SARRT communities to first agree on what is to be included in a complete and thorough suspect examination. Clearly, agencies that use officers or even evidence technicians to collect such evidence are only doing a very superficial examination. As with the victim, a thorough forensic examination of a sexual assault suspect will include the following:

- taking a limited medical history (based on the type of legal consent/authorization);
- checking vital signs;
- conducting a general and genital examination, and;
- collecting any physical evidence such as clothing, hair samples, foreign debris, and swabs.

Typically, the forensic examination of a suspect is actually identical to the victim examination – except of course, there is no pelvic examination. Another difference is that -- unlike the victim examination -- law enforcement personnel must remain present at all times during the forensic examination of a suspect. This must be clearly stated in any protocol that is developed. And although it is not a common problem, policies must also address how force will be used if it is necessary with a suspect who is combative or dangerous.

More information about the protocol for suspect examinations is discussed in the Concepts and Issues Paper on Investigating Sexual Assault that was released in 2005 by the National Law Enforcement Policy Center of the International Association of Chiefs of Police (IACP). It was designed to provide background discussion for their Model Policy on sexual assault investigation that was released at the same time. The following excerpt appears on page 12:

At the beginning of the forensic examination, the investigating officer should provide the examiner with a summary of the assault, including the acts reported, the location, any physical identifying information provided by the victim or witness(es), and any potential injuries that the victim described inflicting on the suspect. Because the forensic examiner is an agent of the investigating officer, a Miranda warning must be provided to any suspect who is questioned while in custody. This includes questioning the suspect about his medical history (since the information will be used to evaluate any possible findings). The examiner should then obtain a medical history from the suspect, if possible. This history should include recent information on any anal or genital injuries, surgeries, diagnostic procedures, or medical procedures that may affect the interpretation of the current findings. Such information can help to avoid confusing preexisting lesions with current injuries or findings. If the suspect invokes his or her right to remain silent, the examiner should bypass the medical history and continue the examination.

In addition to the collection of such biological and trace evidence, the forensic examiner should also record the suspect's vital signs and document (including through the use of body diagrams and photographs) any visible injuries or complaints of pain. Depending on the case history, urine and blood samples may be needed for toxicology or to counter potential defenses that might be raised by the suspect. DNA reference samples of blood and/or saliva should also be obtained.

During the forensic examination, all physical findings must be carefully documented, including any observable or palpable tissue injuries, physiologic changes, or foreign material (e.g., grass, sand, stains, dried or moist secretions). Unlike in the forensic examination of the victim, there should be no conclusion as to whether the findings are consistent with the history provided by the suspect. Both the examiner and attending officer should be prepared to document any spontaneous statements made by the suspect regardless of whether the suspect is in custody or provided with a Miranda warning.

For more information, the IACP's Model Policy and supporting Concepts and Issues Paper are available at: [Investigating Sexual Assaults Concepts and Issues Paper \(July 2005\)](#), [Investigating Sexual Assault Model Policy \(May 2005\)](#). In the Appendix of this article, you will also find a checklist for conducting suspect examinations that was developed by forensic examiners in Columbia, South Carolina; these were provided courtesy of Terry Casto with Palmetto Health Richland / Baptist SANE. I hope that you find this information helpful as you craft a protocol and materials to use in your own community.

Of course, if a suspect is not arrested for several days following a sexual assault and the victim was unable to fight or resist at the time, a full forensic examination of the suspect may not be recommended. However, a DNA reference sample should still be obtained in these cases, because evidence still may be recovered from the victim or the crime scene that will connect the suspect to the victim or the location of the crime. Depending on state and local protocol, this DNA reference sample might be obtained using blood or a DNA reference sample might also be obtained using a buccal swab, which could be done by law enforcement personnel or evidence technicians if they have the proper training to do so. This is especially important now that so many states are extending or even abolishing the statute of limitations for sexual assault crimes. Even if the sexual assault being investigated today is not successfully prosecuted, a DNA reference sample should be obtained from the suspect in case there is another one in the future.

Overcoming the barriers: The SDPD model

In California, where I spent my law enforcement career, suspect examinations are clearly seen as evidentiary and law enforcement agencies contract with forensic examiner programs in order to conduct them. Therefore, before I conclude this article, I want to describe the protocol that we had in place for suspect examinations in San Diego -- because I believe it provides a model for policies and procedures that can be used effectively in other communities.

The City of San Diego has an exclusive contract with one forensic examiner program for victims 18 and older and another one (Children's Hospital) for victims under the age of 18. To address the issue of victim/suspect contact as well as possible contamination, the San Diego Police Department (SDPD) decided not to have suspect exams conducted at the same (SART) facility as victim exams. Rather, they decided that suspect exams would be conducted at SDPD Headquarters, so they set up an examination room specifically for this purpose. This was a very attractive option for SDPD because arresting officers already had to bring the suspect to headquarters to get fingerprints, photographs, and booking approval. Eliminating a trip to the SART facility therefore saves their officers valuable time that can then be allocated to the investigation.

Once the suspect is brought to SDPD Headquarters, the examination is conducted by a sexual assault forensic examiner who has undergone a background investigation in order to obtain clearance. Once they are cleared, these examiners are provided with police identification as a subcontractor, so they can respond directly to SDPD Headquarters when a suspect examination is needed, and they do not need to be escorted through a secure building. If they arrive before the arresting officer, they can begin to prepare for the suspect examination. Afterward, they also impound the forensic evidence collected during the suspect examination directly in the property room. This works extremely well because the arresting officer no longer has to wait for the swabs to dry or for the forensic examiner to package the evidence or complete their reports. The forensic examiners also often complete the property tag more thoroughly than officers did before this protocol was implemented, because impounds and property tags were generally completed by officers at the end of a very long shift. For forensic examiners, they are now completed immediately after concluding the examination. Clearly, there are many advantages of this model that can be tailored and adapted for the needs of widely varying communities.

Resources provided in the Appendix

For further guidance in developing (or improving) the protocol for conducting suspect examinations in your community, I have provided a number of resources in the Appendix of this article. I have already mentioned that the Appendix includes detailed instructions on how to collect buccal swabs as well as a sample template and affidavit for a warrant to obtain a suspect examination. It also includes the checklist for conducting suspect examinations that was provided by forensic examiners in Columbia, South Carolina as well as a clothing documentation form developed by members of the San Diego County SARRT. I hope that you find all of these materials helpful as you develop policies and protocols for suspect examinations in your own community.

I also provided internet addresses for the materials that are available for suspect examinations in California and North Dakota, as well as the IACP Model Policy and supporting Concepts and Issues Paper on sexual assault investigation. In the process of developing a protocol, guidelines, documentation forms, evidentiary kits, and other materials for your community, I expect that the discussion will provide a way for SART members to come to agreement regarding what should be expected of a suspect examination. I hope I have provided both the encouragement and the specific guidance that you need to work together with other professionals in your community to ensure that suspect exams are conducted routinely and according to best practice. Good luck!

Appendix A: Guidelines for the Suspect Examination Palmetto Health Richland / Baptist SANE

While waiting for the forensic examination do not allow the suspect to wash his hands, change clothes, or use the toilet so that evidence will not be lost.

A law enforcement officer should be with the suspect at all times including during the forensic examination.

1. *Introduce yourself* and explain your role
2. *Review* search warrant and what has been authorized to be collected
3. Have *medical screening* done by MD
4. *Open sealed suspect kit*
5. Obtain *pertinent history* from law enforcement
 - a. Date, time and location of assault
 - b. Victim's account of assault
 - i. Injuries inflicted on suspect
 - ii. Bite marks
 - iii. Noted tattoos, piercing, or scars
 - iv. Acts committed
 - v. Was victim on her menses
6. *Medical* interview, if patient cooperative
 - a. Medical conditions
 - b. Allergies
 - c. Current medications
 - d. Recent UTI's or other anogenital conditions
 - e. History of a vasectomy
7. Take an *over all photograph* of suspect
8. *Collect clothing*, have undress on top of debris sheet. Look for tears or stains to clothing. Clothing may have already been collected at time of custody.
9. *General physical examination*
 - a. Weight, height, hair color, presence of facial hair, eye color
 - b. Vital signs
 - c. Note demeanor, affect, speech and coordination. Also note if suspect is right or left handed.
 - d. Note any behavior which may be caused from drugs.
 - e. Breath and body odor
 - f. Note tattoos, scars, birthmarks or piercings
 - g. Look for glass, leaves, fibers, etc., in suspect's hair.
 - h. Note needle marks

- i. Note any other identifying marks or lesions
10. Scan entire body with *UV light* and collect areas of positive fluorescence.
11. *Photograph* all nongenital trauma including defense wounds.
12. If *bite mark* present: photograph, collect swabs using double swab technique, and consider having an impression made by a forensic odontologist
13. Collect *oral swabs*, if indicated. Also note oral cavity.
14. Collect *pulled head hair samples*. Consider collection of facial and/or body hair.
15. *Fingernail scraping/cutting*, if indicated. This evidence may be important when the assault history included digital penetration.
16. Obtain *lab specimens*. Legal blood alcohol and toxicology for crime lab. When drawing a legal blood alcohol prep site with Iodine only, swabbing site with alcohol can alter results. For hospital lab: HIV, hepatitis panel, herpes culture, gonorrhea/chlamydia from urethra and rectum, gonorrhea culture from throat, urinalysis (checking for possible trichomonas).
17. *Genital exam*
 - a. Collect any matted pubic hair.
 - b. Comb pubic hair.
 - c. Collect pulled pubic hair, 20-40 hairs
 - d. Inspect genitals, look for TEARS, also note for any foreign material (blood, feces, or lubricant). Document any genital abnormalities, tattoos and venereal warts.
 - i. Penis
 - ii. Anus
 - iii. Scrotum
 - iv. Perineum
 - e. Collect swabs from shaft of penis and glans, if uncircumcised swab under foreskin. Collect specimens when assault occurred within 24 hours.
 - f. Collect anal swabs, if indicated. Use anoscope, if indicated.
 - g. STD collection.
18. *Document* all objective findings.
19. Consider if patient needs a *tetanus shot or antibiotics* for any injuries
20. *Dry specimens, package and label*.
21. *Sign* suspect kit over to law enforcement officer.

Appendix B: Clothing Documentation Form

San Diego County SART ADDENDUM TO 923 Clothing Documentation

Obtain a complete history prior to evidence collection and documentation. Complete all blanks. If not applicable, write N/A. When specific evidence is not required, write "deferred." Document accurately. **Write clearly and neatly:**

____ **Patient Presented at Hospital Wearing Clothing Worn During the Assault:**

Describe clothing (with minimal handling) carefully noting condition (clean, dirty, rips, tears, stretched out elastic, missing buttons) and visible signs of foreign material (grass, fiber, hair, twigs, soil, splinters, glass, blood, dry or moist secretions).

Procedure for wet clothing: Items must be dry to preserve evidence. If clothing is wet, lay on a sheet of clean, unused, white paper and cover with another sheet of white paper. Gently fold each article of clothing and place in a labeled, sealed paper bag. Give to the officer. Advise that the clothing is wet.

Bra: _____

Shirt: _____

Undershirt: _____

Sweater: _____

Jacket: _____

Pants: _____

Underwear: _____

Socks (state one or two socks present): _____

Shoes (state one or two shoes present): _____

Other: _____

____ **Patient Presented at Hospital Wearing Clothing Put On Immediately After the Assault:**

Describe clothing put on after the assault, (with minimal handling) carefully noting any visible signs of foreign material (grass, fiber, hair, twigs, soil, splinters, glass, blood, dry or moist secretions). Focus on clothes worn closest to the genitals or areas where the suspect's mouth made contact, i.e., breasts/bra.

Bra: _____

Shirt: _____

Undershirt: _____

Sweater: _____

Jacket: _____

Pants: _____

Underwear: _____

Socks (state one or two socks present): _____

Shoes (state one or two shoes present): _____

Other: _____

Patient's Description of Clothing Worn During the Assault:

____ Patient brought clothing worn during assault. Collected by forensic examiner.
Initial

____ **Clothing worn at the time of the assault collected by law enforcement prior to the arrival Initial
of the forensic examiner.**

____ Patient provides location of clothing worn at the time of the assault and/or additional
Initial evidence and law enforcement is notified at _____ hours.

____ Clothing collected by law enforcement.
Initial

In cases involving non-acute exams where clothing, bedding, or other evidence has been identified and collected, a DNA reference sample must be collected from the patient.

Buccal Swab _____ Blood _____

Based on the patient's history, note any areas that need to be evaluated by the Crime Lab and/or investigating officer for foreign material, i.e., blood, dry or moist secretions, and/or tears, stretched out material, and missing buttons.

Bra: _____

Shirt: _____

Undershirt: _____

Sweater: _____

Jacket: _____

Pants: _____

Underwear: _____

Socks (state one or two socks present): _____

Shoes (state one or two shoes present): _____

Other: _____

Appendix C:
San Diego Police Department
Instructions for Obtaining Mouth (Buccal) Swabs

Collection Kit Contents

- (4) Four paper wrapped cotton swabs.
- (1) One Manila envelope with attached white information label.
- (1) One slightly smaller manila envelope.
- (1) One evidence seal.
- (1) One pair of powder-free latex gloves.

Directions

1. Put on a pair of powder-free latex gloves. Remove one of the four cotton swabs from the sterile paper packaging.
2. Rub the cotton tipped end of the swab against the inside of the cheek of the mouth while you slowly rotate the swab. Rub against the inside of the cheek for about 30 seconds.
3. Place the swab in the slightly smaller envelope. The empty paper swab packaging can be discarded. Repeat the process for the remaining three swabs and also place those in the smaller envelope. Remove the latex gloves from your hands and discard.
4. Place the slightly smaller envelope now containing the four swabs in the envelope with the attached white information label.
5. Fill in all the information on the white label.
6. Place the envelope with the white label in the original envelope labeled “Reference Mouth Swab Collection Kit”.
7. Seal the “Reference Mouth Swab Collection Kit” with the evidence seal and mark the seal appropriately.
8. Place the envelope containing the mouth swabs into the Property Room and ask that they are stored frozen.

Warnings

1. Do not handle or contaminate the cotton tipped end of the swabs. They should only come in contact with the subject’s mouth.
2. The swabs are not to collect saliva but are for the collection of cells from the lining of the cheek of the mouth. Therefore, vigorously rub them against the inside cheek of the mouth.
3. Make sure to rotate the swabs in the suspect’s mouth so that the entire cotton surface of the swab is used for collection.

Appendix D:
Templates for Search Warrant and Supporting Affidavit

1 IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
2 CENTRAL DIVISION

3 STATE OF CALIFORNIA) AFFIDAVIT FOR SEARCH WARRANT
4 (ss.
COUNTY OF SAN DIEGO)
5 No. _____

6
7 I, XX, do on oath make complaint, say and depose the
8 following on this 20th day of June, 2007: that I have
9 substantial probable cause to believe and I do believe that
10 I have cause to search: the person known as -, a- male adult
11 having a date of birth of -, being about ' " in height and -
12 lbs. in weight, and is believed to be currently residing at-
13 , in-, California, for the following property, to wit: to
14 seize the person to conduct a full body and genital
15 examination, identifying and documenting marks such as
16 tattoos or scars, and identifying and documenting any
17 evidence of injury, as well as collecting any physical
18 evidence such as clothing, hair, blood and saliva samples,
19 foreign debris, and swabs of the penis and scrotum (as well
20 as rectal and any other swabs if appropriate depending on
21 history) sufficient for comparison purposes using the least
22 amount of force necessary to take said samples, and to take
23 a set of major case fingerprints and palm prints. Injury
documentation will include not only written documentation of

1 the injury, but also photographic and any other medically
2 appropriate documentation.

3 I am a peace officer employed by the San Diego Police
4 Department (hereafter SDPD) and have been so employed for
5 about- years. I am currently assigned to the- Division and
6 have been so assigned for over- years. During my career, I
7 have investigated at least - sexual assault cases.

8 During the course of my duties, I have learned the
9 following information based upon my discussions with the
10 named witnesses or by having read the reports of or talked
11 with other SDPD officers who have spoken directly with the
12 named witness. All references to dates refer to the current
13 calendar year unless otherwise stated.

14 (ADD PROBABLE CAUSE HERE. ENSURE THAT PROBABLE CAUSE
15 DESCRIBES THE REASONS FOR ALL SWABS THAT WILL BE TAKEN.)
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1
2 During the course of my duties, I have learned the following
3 information based upon my discussions with the named witnesses or by
4 having read the reports of or talked with other SDPD officers who have
5 spoken directly with the named witness. All references to dates refer
6 to the current calendar year unless otherwise stated.

7 I have prepared the attached 17 page report in the course of my
8 duties. I was assigned the case after the victim initially reported
9 the crime to SDPD patrol officers. I hereby request incorporation by
10 reference herein of said report as if fully set forth and identified
11 by SDPD case number 95-091454 located in the upper left portion of the
12 front page. This crime was a forcible rape, committed in violation of
13 section 261(2) of the California Penal Code. The victim in this case
14 was identified as Ms. Jackie Lindsay.

15 During the course of the investigation, the victim, Jackie
16 Lindsay, was examined by medical personnel following the rape and
17 biological samples were taken from her vaginal vault. The evidence
18 was analyzed by the San Diego Police Department and biological samples
19 sufficient for DNA testing were identified. The San Diego Police
20 Department used a Polymerase Chain Reaction (PCR) DNA test to identify
21 the genetic markers of the assailant in Lindsay's assault. The
22 evidence was then sent to Cellmark for RFLP testing with the intent to
23 attempt to identify the suspect using the Combined DNA index system
computer data base (CODIS) maintained by the FBI. RFLP was obtained,
however, there was no match in CODIS.

In June of 1999, Mr. Brian Burritt was hired by the San Diego
Police Department Crime Laboratory as a Criminalist. His specific
field of expertise is that of a DNA Analyst. Prior to his employment

1
2 with the San Diego Police Department, Mr. Burritt was employed as a
3 Criminalist with the California Department of Justice, DNA Laboratory,
4 Berkeley, California. Mr. Burritt has been qualified as an expert
5 witness, in the area of DNA in the Superior Courts of 11 different
6 counties within the State of California. The San Diego Superior Court
is included in that list.

7 Upon his employment with the San Diego Police Department's Crime
8 Laboratory, part of Mr. Burritt's job description was to examine any
9 and all unsolved cases containing DNA evidence and, to create a SDPD
10 data base for unsolved cases with PCR evidence.

11 On June 20, 1999, Mr. Burritt began an analysis of the PCR
12 profile collected from Lindsay's case. Once the PCR profile from this
13 case was entered into the data base, the data base compares the
14 profile against at least 200 other PCR profiles collected from known
15 sex and/or violent crime scenes from within San Diego County. The
16 data base compares against other PCR profiles searching for matches.
17 The search revealed a PCR profile match to Paul Velasquez, an
18 identified suspect in an indecent exposure investigation. Mr.
19 Burritt examined Velasquez' PCR profile and found that in the
20 Caucasian population the frequency is 1 in 2600; in the Hispanic
population the frequency is 1 in 5400 and in the Black population the
frequency is 1 in 110,000.

21 Utilizing official police computers, I conducted a background
22 investigation on Velasquez. I learned Velasquez was not in custody at
23 the time Lindsay was forcibly raped. I learned Velasquez was living
within the City of San Diego at the time the rape occurred.

Velasquez' residence was located at 7106 Armadillo Street, in the City

1
2 and County of San Diego. Armadillo Street is well within a three (3)
3 miles radius of the location where Lindsay was raped. Through my
4 background investigation, I learned Velasquez' physical description
5 matched the suspect description given to me by Lindsay. Additionally,
6 I learned Velasquez has prior convictions for sexually related type
7 crimes.

8 A biological reference sample is now needed from Velasquez for
9 RFLP testing which will provide additional genetic information to more
10 conclusively include or exclude Velasquez as the person who sexually
11 assaulted Jackie Lindsay. By obtaining saliva swabs from Velasquez,
12 forensic laboratory personnel will be able to make further comparisons
13 to the RFLP identified in Lindsay's case. I know that comparisons can
14 be made between fluids found on or in the victim and that of the
15 suspect. By removing blood and saliva, laboratory personnel will be
16 able to make comparisons with those samples taken from the suspect to
17 those taken from the victim using DNA and/or more conventional
18 laboratory comparisons.

19 I have been advised that DNA is short for deoxyribonucleic acid.
20 DNA molecules are contained within human cells and hold the genetic
21 'coding' that makes each of us individually distinctive (except
22 identical twins). While forensic DNA technology cannot yet
23 discriminate among human beings to the same extent as fingerprint
evidence, it is capable of identification within a very small percent
of major populations depending on the type of analysis employed.
Forensic DNA evidence has been routinely admitted in courts of
California since 1989. Samples taken from the suspect as described
more fully above will be compared against that found on the victim.

1
2 In removing the blood and other samples from the suspect, I will use
3 medically accepted practices, utilize the services of a trained person
4 in drawing the blood, and use the least amount of force necessary to
5 collect the described evidence.

6 The suspect was booked into State Prison on an unrelated charge
7 and was booked under the above described California Department of
8 Corrections number.

9 I request that this declaration, the affidavit, search warrant
10 and supporting attachments be sealed pending further order of the
11 court. I make the request for the following reason. Without sealing,
12 the affidavit and supporting documentation and warrant become a matter
13 of public record within ten days. Penal Code section 1534(a).

14 Also, Penal Code section 293 provides that a victim of a sex
15 offense be advised that his or her name will become a matter of public
16 record unless he or she requests that it not become a matter of public
17 record. The victim in this matter has not yet determined whether or
18 not she wishes her name to become a part of the public record. If the
19 information in these documents is not sealed, the victim's name can be
20 revealed to anyone who wishes to examine the court files, and the
21 victim will be denied her rights under Penal Code section 293. For
22 this reason, I believe all information identifying the victim should
23 remain sealed pending further order of the court.

Therefore, based on my training, experience, and the above facts,
I believe that I have substantial cause to believe the above described
property or a portion thereof will be on said person when the warrant
is served. Based on the aforementioned information and investigation,
I believe that grounds for the issuance of a search warrant exist as

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set forth in Penal Code section 1524. I, the affiant, hereby pray that a search warrant be issued for the seizure of said property, or any part thereof, from said person at any time of the day, good cause being shown therefore, and that the same be brought before this magistrate or retained subject to the order of this Court.

This affidavit has been reviewed for legal sufficiency Deputy District Attorney David J. Lattuca.

Given under my hand and dated this - day of -, 1999.

Joseph Cristinziani ID #2913
San Diego Police Department
Homicide Section

Subscribed and sworn to before me
this - day of , 1999
at a.m./p.m.

Judge of the Superior Court
Central Division

1
2 IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

3 CENTRAL DIVISION

4 S E A R C H W A R R A N T

5 No. _____

6 The People of the State of California, to any
7 sheriff, constable, marshal, police officer, or any other
8 peace officer in the County of San Diego: Proof, by
9 affidavit, having been this day made before me by Joseph
10 Cristinziani, a peace officer employed by the San Diego
11 Police Department, that there is substantial probable
12 cause for the issuance of the search warrant pursuant to
13 Penal Code section 1524, you are therefore, commanded to
14 make search at any time of the day, good cause being shown
15 therefore, the: person known as Paul Velasquez, an
16 Hispanic male adult having a date of birth of 01-06-70,
17 being about 5'8" in height and 145 lbs. in weight, and is
18 believed to be currently residing and in custody of the
19 State of California under California Department of
20 Corrections number E04294, located at the North Kern State
21 Prison; at 2737 West Cecil Avenue, Delano, California; for
22 the following property, to wit: to seize the person and
23 take hair, blood and saliva samples sufficient for
comparison purposes using the least amount of force
necessary to take said samples, and, if you find the same,
or any part thereof, to bring it forthwith before me at

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the Superior Court of the Central Division, County of San Diego, State of California, or to any other court in which the offense in respect to which the property or things is triable, or retain such property in your custody, subject to the order of this Court, pursuant to section 1536 of the Penal Code.

Given under my hand and dated this - day of -, 1999.

Judge of the Superior Court
Central Division