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Marking the Difference Between Illegal and Legal Heterosexual
Sex: the Sexual Assault Evidence Examination

by

Lisa Verdon, B.A.

A thesis submitted to
the Faculty of Graduate Studies and Research
in partial fulfilment of the requirements for the degree of

Master of Arts

Department of Sociology and Anthropology
Carleton University
Ottawa, Ontario
August 7, 1997

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and Research acceptance of the thesis

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submitted by Lisa Verdon, B.A.
in partial fulfilment of the requirements for
the degree of Master of Arts

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August 26, 1997

Abstract

This thesis examines how women's bodies become inscribed with meanings of heterosexual sexual assault (illegal heterosexual rape) and sex (legal heterosexual sex) through the practices involved in the sexual assault evidence kit. It is argued that this refined technique of judgement came about with the concern of protecting 'innocent' men. As a technique of resolution, the sexual assault evidence examination continues in the path of its historical predecessors and marks the difference between legal heterosexual sex and illegal heterosexual rape in ways which exclude women's experiences.

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This thesis is dedicated to the memory of my first and most influential teacher. my mother, Marion Milks-Verdon. I will always be indebted to her, for not only giving me life, but for teaching me about strength and perserverance.

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Chapter One

The Sexual Assault Evidence Examination: An Introduction

The examination combines the techniques of an observing hierarchy and those of a normalizing judgment. It is a normalizing gaze, a surveillance that makes it possible to qualify, to classify and to punish. It establishes over individuals a visibility through which one differentiates them and judges. That is why, in all the mechanisms of discipline, the examination is highly ritualized. In it are combined the ceremony of power and the form of the experiment, the deployment of force and the establishment of truth (Foucault: 1979: 184).

Introduction

The sexual assault evidence kit contains the instructions and instruments used to conduct forensic evidence examinations on women who have been raped within the previous seventy-two hours. The examination is voluntary; women choose to submit to it in order to provide evidence for the police and Crown Attorney so that their claims of sexual assault may be substantiated in a court of law. The precision that this examination requires implies a certain knowledge of what sexual assault is. In the course of this thesis, I examine the instructions that accompany the kit in order to identify what knowledge of rape establishes the foundation of the examination. In doing so, I argue that in the model of sexual assault upon which the kit is based, the criteria used to judge a woman's experience of rape actually excludes that experience. Further, a woman's experience of rape is not, and cannot be, adequately taken into account by this model.

My concerns with, and initial reaction to, the kit

My interest in the sexual assault evidence kit developed when I became a volunteer with a rape crisis centre. The volunteer training sessions I participated in addressed a variety of concerns, including the legal and medical aspects of rape. During the session on medical procedures, the training coordinator passed around the sexual assault evidence kit, a metal box that contained a variety of devices for the collection of forensic evidence of sexual assault (see Appendix A for a copy of the instructions that accompany the kit).

My initial reaction to the kit was a mixture of horror and disbelief. I had never been keen on spreading my legs for gynaecological examinations and I tried to make sense of how someone had conceived of subjecting a woman who had just been raped to the prodding and poking of the instruments in the kit. My horror stemmed not only from the unpleasantness of the examination but from my confusion about the ends the examination could supposedly achieve.

The aim of the kit is to determine if there are any material signs (evidence) of sexual assault. Initially, I thought the evidence that the kit collects might suggest that there was some sort of physical contact between two people. How could such a technique determine if what the woman had experienced was rape or just sex? For example, part of the examination includes looking for semen on the woman's body and examining her clothing for rips and tears. While traces of semen may be found on the woman's body or her clothing may be ripped or torn, an accused man could easily say that, yes, indeed, he had had a sexual experience with the woman, but it was consensual and not sexual assault.

Conversely, there could be an absence of marks of semen on the woman's body despite the fact that the accused man had ejaculated. Had he worn a condom, for instance there would be no traces of semen on the woman's body.

My experience with the kit did not end with my training. As a rape crisis counsellor, I accompanied women to the hospital emergency room and police station. At the hospital I saw how the kit was administered, and my initial horror of the kit was reinforced. It was not difficult to understand why many women referred to the sexual assault examination as a second rape (Toronto Rape Crisis Centre, 1985: 69).

Prior to my involvement with a rape crisis centre I did not realize that forensic evidence examinations existed. I was not aware of all the procedures, both legal and medical, that were in place to treat and deal with rape victims. The evidence examination, as I will demonstrate, is a precise and thorough examination. Great care is taken to secure the collection of all possible traces of evidence of a sexual assault. I believed that the precision required by the examination should comfort me. After all, the aim of examination is to help support a woman's claim of sexual assault. Instead, however, the knowledge of the sexual assault evidence kit prompted more questions about how sexual assault is understood and the ethics of how we choose to deal with sexual assault in formalized institutions.

Purpose of research

It is my initial horror about the sexual assault evidence examination that I have chosen to explore in this thesis. My aim is not to speculate on how the procedures involved in the rape evidence kit can be improved but, rather, to investigate what is at stake for women in its implementation. Despite the use of standardized sexual assault evidence kits in Canada, the United States, and Europe since the late 1970s, there has been little discussion of the sexual violence of the sexual assault evidence examination itself. For the most part, literature addressing the sexual assault kit portrays the kit as a simple forensic tool. Correspondingly, research has focused on ways of improving the collection of forensic evidence and on what constitutes evidence (Moreau and Bigbee, 1995a and 1995b; Keating and Allard, 1994; Paul, 1982 and 1990; Samuels, 1983), or on improving the administration of the kit (Burgess et al, 1995; Ledray and Arndt 1994; Dunn and Gilchrist, 1993; Rambow et al, 1992; Young et al, 1992; Martin et al, 1985; Ruch and Chandler, 1980). There has been little discussion in feminist literature regarding the sexual assault evidence kit. The work of Holmstrom and Burgess (1978b) provides one of the few in depth feminist critiques of the kit. Their critique, however, is limited to the administration of the kit. For example, they discuss physician bias in passing judgement on whether or not the woman really was raped and physician's oversights as to what counts as evidence. Like other researchers, Holmstrom and Burgess do not put the actual practice of the kit into question. Their analysis leads instead to the conclusion that what is needed is a refinement of the way the evidence kit is practiced. The underlying

assumptions of the kit itself are not questioned.

The goal of this thesis is to investigate what the sexual assault evidence kit means socially. What I am questioning is the implied importance of forensic examinations. That is, how have we arrived at employing this method of investigating rape? What understanding of rape does forensic evidence examinations valorize? What experiences of sexual assault can this method validate in a court of law? And most important, I think, what does such a method leave out?

Throughout this thesis, unless otherwise noted, I will be referring to the rape of women by men. Correspondingly, the application of the sexual assault evidence kit refers to the examination of women who have been raped by men. I have chosen this focus because the historical roots of both the legal definitions of rape and the use of forensic examinations in rape cases refer exclusively to the rape of women by men. Same-sex rape, as well as the rape of men by women, were not recognized in Canadian law until 1983. The suitability of forensic examinations in same sex rape, or the rape of men by women, I would argue (although I do not explore this point here) further demonstrates the fallibility of the model of sexual assault employed in the examination. In addition, the terms rape and sexual assault are used interchangeably in this thesis despite the different legal meanings attached to these terms.¹

1. The different meanings of the two terms are explored in the next chapter. The different legal meanings of the two terms are not necessarily reflective of the way in which the terms are used in everyday speech. It is for this reason that the terms are used interchangeably in this thesis.

Rape, sex and power

Foucault describes power as actions upon actions: “(t)he exercise of power consists in guiding the possibility of conduct and putting in order the possible outcome” (Foucault, 1983: 221). The sexual assault evidence examination can be seen as one such form of power. For, as I have already mentioned, the examination produces the basis of evidence in sexual assault cases. The examination helps to determine whether or not the Crown Attorney will decide to prosecute a man with having committed a crime of sexual assault. The examination establishes the criteria used to judge an action as sexual and as an assault. But what facts can such an examination establish to support a woman's claim that she has been sexually assaulted? What kind of truths can be determined through the sexual assault evidence kit? And, more tellingly, what political distinctions does the examination maintain between illegal rape and legal sex? For the kit not only reveals what sexual conduct is illegal but, by implication, what sexual conduct is legal.

My main argument is that the sexual assault evidence kit reinforces distinctions between illegal heterosexual sex (rape or sexual assault) and legal heterosexual sex ('normal' heterosexual sex) that ignore women's experiences of rape. In the sexual assault evidence examination, the 'damaged' body is signified as a raped body. The body, and not the woman, is posited as object of sexual encounter. I conclude that, at best, the sexual assault evidence kit reproduces particular historical social constructions of rape which depend upon a social economy in which women are regarded as the property of men.

Outline of research

The kit relies upon the assumption that there is a material difference between legal sex and illegal rape, however the nature of this difference is never articulated. I take the legal system on its own terms and examine what it considers as the (presumed) difference between these two types of experiences. In Chapter Two, I address the current legal definitions of sexual assault in Canada. Next, I outline some of the concerns that arose during the 1970s and 1980s regarding the administration of the kit. A detailed account of the kit's administration at the Ottawa-Carleton Regional Sexual Assault Treatment Program located at the Riverside Hospital is then provided. This includes a description of the different procedures involved in the sexual assault evidence examination. The description of the kit's administration is based on the instructions that accompany the Forensic Science Sexual Assault Evidence Kit (at present there are two variations of the kit in the Ottawa area: the Royal Canadian Mounted Police and the Forensic Science Centre have two slightly different kits). In addition, information is also drawn from personal communication with Halina Siedilokowski, the coordinator of the Sexual Assault Treatment Program.

In Chapter Three, I discuss the historical conditions in the legal system and forensic medicine that materialized in the sexual assault evidence kit. As Foucault writes: “We have to know the historical conditions which motivate our conceptualization. We need a historical awareness of our present circumstances” (Foucault, 1983: 209). In demonstrating the importance of the historical development of the sexual assault evidence

examination three points are put forth. First, the meanings of rape have never been stable. Historically, the meanings attached to legal definitions of rape have varied and shifted. One example of this is that in Canada we no longer have a crime of rape but crimes of sexual assault. The change in terminology is indicative of shifting social meanings of rape, and, in turn, shifting meanings attached to women and bodies. The shift in meanings attached to rape points to the unstable condition of rape as an object of examination. My second point is that despite the shifting meanings of rape, forensic medicine has attempted to 'model' rape as an object. In a sense, rape has been treated as a disease to which markers can be attached in order to determine the logic and extent of the 'illness'. Third, the attempt to model rape as a disease, or a condition, arose out of the concern of protecting 'innocent' men from 'false' charges. In demonstrating these points I draw on Irigaray's reformulation of Marx's theory of commodification in order to investigate how women's bodies have been historically marked as objects in the legal system and in forensic medicine.

In Chapter Four, I look at the place of the woman in the sexual assault evidence examination. I argue that the body, and not the woman, is posited as the object of sexual encounter. The woman, as more than a body, as subject of the experience of rape is thereby removed from the picture. Through an extension of Foucault's work on the ritual of the confession and the examination, I look at the way in which power circulates in the examination. Foucault's method of analysis helps contextualize the ways woman as subject (a thinking subject, a subject that perceives) becomes subject to (the object of) examination.

The sexual assault evidence kit is not a solution to sexual violence, instead it serves to define the question of what is sexual violence and whether it has occurred. The way in which the sexual assault evidence kit poses the problem of sexual violence cannot serve the interests of women as subjects because within it women are posited as objects of examination. Women's perception of their experience thus become irrelevant to the model of sexual assault employed in the sexual assault evidence examination.

Research boundaries

In this thesis, I examine one of the specificities of law, through the sexual assault evidence kit, of the regulation of women, bodies, language, and sexualities. It is not my concern to assess the practical aspects of care and treatment that are provided to victims of sexual assault or what happens when the kit is introduced into the courtroom as evidence. This thesis marks an effort to begin to question the sexual assault evidence examination as a method of deduction in the resolution of sexual assault cases. In turn, it is also a call to question how we situate and constitute the problem of sexual violence.

Chapter Two

The Sexual Assault Evidence Kit

Introduction

The purpose of this chapter is to provide a descriptive account of the medical procedures necessary for sexual assault evidence examinations. This descriptive account is provided so that the social and political distinctions that are made between legal heterosexual sex and illegal heterosexual rape in the sexual assault evidence kit can be explored in the following two chapters.

The aim of the sexual assault evidence examination is to provide evidence for Crown Attorneys who are prosecuting sexual assault offenders in a court of law. Beyond this, however, the examination sheds light on definitions of accepted sexual behaviour between heterosexuals; acts that fall outside the legal notion of sexual assault are those that are not punished and hence, are authorized as legitimate heterosexual sexual behaviour.

In order to determine what distinctions are made between legal heterosexual sex and illegal heterosexual rape, I will describe the basic principles of present-day sexual assault laws in Canada and the forensic procedures of the rape evidence kit. More attention is paid to the latter because other authors (Mohr and Roberts, 1994; Clark and Lewis, 1977) have paid due attention to the legal definitions of sexual assault in Canada. I will also address

concerns that arose from the performance of medico-legal examinations in hospital emergency units. Finally, I will discuss the present administration of the kit at the Ottawa-Carleton Sexual Assault Treatment Unit at the Riverside Hospital. In so doing, I address how certain marks on a women's body authenticate claims of non-consensual sexual activity and conversely, how their absence serves to invalidate claims of non-consensual sexual activity.

Legal definitions of Sexual Assault in Canada

In 1983, the legal definition of rape in Canada was abolished and replaced with the crime of sexual assault. This occurred after a lengthy consultation process between the Law Reform Commission and a variety of other groups, including “the National Association of Woman and the Law, the National Action Committee on the Status of Woman, and the Canadian Nurses Association” (Snider, 1985: 343). Section 143 of the Canadian Criminal Code (Rape and Attempted Rape) and Section 156 (Indecent Assault against a Male or Female) were replaced with Sections 271 through 273 (Sexual Assault laws) (Mohr and Roberts, 1994: 5). One of the objectives of the change in terminology was to represent sexual assault as a crime of violence and not a crime of passion or lust (Snider, 1985: 340; Los, 1994: 31). Hence, the crimes were moved from “the criminal code’s part on sexual offences and public morals to the part dealing with offences against the person” (Los, 1994: 31). One interpretation of the new law, provided by the Department of Justice (Department of Justice, 1988: 5), is: “You have been sexually

assaulted if you have been kissed, fondled or forced to have sexual intercourse against your will.”

According to the new legal definition there are three criteria that an act must meet in order to be classified as sexual assault: “First, the accused must have done something that can be legally labelled as *sexual*. Second, there must have been an *application of force*. Last, the force must have been applied *without consent*” (Boyle, 1994: 137). It is not, then, sexual behaviour or the use of force itself that constitutes illegal sex, but forceful sexual actions without the consent of the woman involved.

Within the new law, sexual assaults are ranked hierarchically according to the degree of physical violence that was exerted over the victim. For example, the most serious sexual assault is aggravated sexual assault. A sexual assault should be classified as aggravated if the victim was wounded, maimed, or disfigured, or if her or his life was endangered. The maximum sentence for this type of sexual assault is life imprisonment. The penalty for sexual assault with a weapon, the second most serious type, is a maximum of fourteen years imprisonment. Characteristics of this crime are that a weapon (or imitation weapon) is used or threats of bodily harm are made to the victim or a third party. A 'simple' sexual assault (the least serious of the three) can be tried as either an indictable offence, with a maximum of ten years imprisonment, or as a summary conviction which carries a maximum punishment of six months in jail and/or a \$2 000 fine. The first two offences are considered more serious and, therefore, are tried as indictable offences.

A significant change in the redefinition of rape to sexual assault was the removal of

the clause that exempted husbands from being charged with raping their wives. Section 278 was introduced to permit spouses to charge either their husband or wife with sexual assault. Sexual assault laws were redefined in gender neutral language. It was now recognized that anyone, male or female, could be sexually assaulted by either a man or a woman whereas previously, it was only legally conceivable that a woman could be raped by a man who was not her husband.

Forensic rape evidence examinations

Forensic testing in rape cases is not arbitrary. Indeed, the testing requires precise detail in order to establish the threefold objectives which are to identify the accused, determine the amount of physical force used and to establish the time of the assault (Department of Justice, 1988: 17; Ledray and Arndt, 1994: 10). Legal requirements necessitate that the chain of evidence is followed, that is, that the same person is always present with the evidence, or if this person is not present, that the evidence is securely locked away until it is handed over to police. The standardization of the sexual assault evidence examination (more on this later) is meant to assist in assuring that all possible evidence is gathered to corroborate charges of sexual assault.

William M. Green, a medical doctor from the University of California in the United States has, to date, provided the most in depth account of the procedures involved in the rape evidence examination in his book, *Rape: The Evidential Examination and Management of the Adult Female Rape Victim* (1988). I will be drawing on his work in my

description of the procedures involved in the sexual assault evidence examination.

Rape evidence examinations in hospital emergency units

Prior to the establishment of sexual assault treatment programs, forensic examinations of rape victims were performed in hospital emergency units (in some areas this is still the case). A rape victim, like any other patient, was assessed as she came into the unit. How quickly she was examined and treated was prioritized according to the seriousness of her physical injuries. As Green (1988: 48) and Clark and Lewis (1977: 44) have pointed out, emergency rooms at hospitals were not ideal settings for rape victims to be examined. Emergency units were (and still are) fairly chaotic and stressful. If a woman's injuries appeared minor, the waiting period often extended to hours¹. As Green writes:

The harried emergency physician may be ill-equipped for this unique medical-legal encounter and approach the victim with scepticism and animosity. The examiner's unfamiliarity with the compulsory details of evidence collection and the long delays inherent in the system can severely hamper the criminalist's ability to contribute forensic corroboration. The district attorney may have to prepare the case from a suboptimal medical report and then be faced with a reluctant and undertrained medical "expert" (1988: 48).

Crown Attorneys were often reluctant to proceed with rape cases because there was insufficient evidence. Many cases were also thrown out of the courtroom because, despite evidence being collected, the chain of evidence had not been properly followed; thus

1. For a specific analysis of the treatment of rape victims in hospital emergency rooms see Holmstrom and Burgess (1978), "The Hospital as Healer and Detective," in *The Victim of Rape: Institutional Reactions*. New York, Chichester, Brisbane, Toronto: John Wiley & Sons.

rendering the evidence inadmissible in a court of law (Toronto Rape Crisis Centre, 1985: 69).

Rape victims often received judgmental and inconsiderate treatment by the staff in emergency units. For example, doctors and nurses, instead of treating the woman's physical injuries and collecting forensic evidence, would often question the woman's actions prior to the rape and the validity of her claims of being raped. Performing forensic rape evidence examinations in emergency units may have seemed inconsistent with medical practitioners who saw the role of the emergency room to be to treat patients who were in immediate, life-threatening danger. One of the solutions to these problems was to create a standardized method and location for gathering forensic evidence and to treat rape victims. Hence, the birth of standardized rape evidence kits and sexual assault treatment units in urban hospitals. Treatment units are usually located in a wing adjacent to the emergency unit.

The move to a standardized method and centralized location was not a force from above. Rather, these changes were initiated and influenced by women working in grass-root organizations such as rape crisis centres. Women working in rape crisis centres across Canada have been a powerful influence in shaping legal and institutional changes with regards to how rape victims are treated by police and medico-legal professionals. The force of their involvement has been present since at least 1973 when rape crisis centres began to spring-up in Canada. In 1975, the Canadian Association of Rape Crisis (CASAC) was established. The association helped these women organize and network nationally in

their goal to eradicate sexual violence against women. Indeed,

(i)t was CASAC who called for the development of standardised (sic) medico-legal procedures for all emergency departments and clinics where women might be examined after a sexual assault. It was rape crisis centres, with the assistance of the association, who developed standardised "Rape Evidence Kits" which could be, and would be, used by examining physicians in gathering forensic evidence (Canadian Association of Sexual Assault Centres, 1986: 1-63).

It is difficult to discern why women in rape crisis centres initiated these changes. That is, whether they endorsed the use of forensic examinations or were simply trying to eradicate some of the biases and oversights on the part of physicians. Part of the difficulty in tracing this history in Canada is due to lack of documentation. In addition, the majority of literature regarding sexual assault evidence examinations is from the United States. As well, literature that appears to have feminist undertones is not directed at a feminist audience but, rather, at those involved in the field of law and medicine.

From a legal standpoint, standardizing the examination provided more opportunity for rape cases to make it to the courtroom. Cases often would not make it as far as the courtroom because there was no physical evidence to corroborate women's statements. Another reason for standardizing evidence collection was to decrease the number of unfounded cases due to insufficient evidence. The standardized method instructed doctors where and how to look for forensic evidence on women's bodies. Such a method provided assurance to Crown Attorneys that all evidence would be gathered and that the chain of evidence would be followed. In part, it was hoped that a centralized location would help ensure that staff were trained to deal with rape victims; rape victims would receive more

empathetic care, and would feel more comfortable coming into the unit and, thus, the number of sexual assaults being reported to the police would increase.

The Ottawa-Carleton Sexual Assault Treatment Program

The Ottawa-Carleton Sexual Assault Treatment Program is one example of the efforts to introduce the changes outlined above. The Treatment Program began operating in July of 1994. The Program is staffed by women trained to deal with sexual assault victims, including a co-ordinator (who is also a trained nurse), a half-time social worker, and ten nurses who work on an on-call basis. The treatment program is situated off to the side of the emergency unit at the Riverside Hospital and is the only facility of this type to serve the Ottawa area. The services offered include crisis counselling, medical examinations, testing for sexually transmitted diseases and the collection of forensic evidence (the sexual assault evidence kit is used for this purpose). The costs of the program are covered by the Ministry of Health.²

The majority of people who make use of the services at the Sexual Assault Treatment Program are, not surprisingly, women. Approximately one-quarter of those who seek out treatment at the Riverside choose to have the sexual assault kit administered and about half of these women have the kit frozen. The kit can be frozen for up to six months. During this time, the woman can decide whether or not she would like to notify the police. Prior to the establishment of the Sexual Assault Treatment Unit in Ottawa, the

2. Recently there has been a proposal to close the Riverside Hospital, along with the Civic, in 1998.

kit was given immediately to the police. Once the kit had been administered in an emergency room it was automatically the property of the police. The decision to proceed with criminal investigations was left up to the police and the Crown Attorney and could proceed even if a woman decided to withdraw her complaint. Now, the kit is only sent to the police if a woman decides she would like to make a formal complaint. At this point, the police decide whether or not to send the kit to the Forensic Science Centre for testing. Usually the kit is only sent for forensic testing if there is an identifiable accused or, in cases where the accused is unknown, he is believed to be a serial assailant. There are also cases where there is an identifiable accused and the evidence kit is not sent for testing (Siedilokowski, 1996).

There are five basic parts to the sexual assault evidence examination. The first part involves obtaining the woman's consent to the examination. The second and third parts involve interviewing the woman about her medical history and the details of the sexual assault. The fourth component is the physical examination of the woman's body. The fifth part is an information session to inform the woman about follow-up treatment. Except for the gynaecological examination that is administered by the on-call physician (who is often male), the on-call nurse is responsible for all parts of the examination. Presently, the nurses are being trained to perform the gynaecological examination as well.

Medical history

Prior to commencing with the examination, the woman signs a consent form (see

Appendix A, I. Consent Form). Next, a general medical history (see Appendix A, II Medical History Form) is taken. This includes personal and demographic information such as the women's name, address, age, sex and Ontario Health Insurance Plan (OHIP) number. As well, any medication that the woman is currently taking and any allergies she may have are noted. Relevant prior medical and/or surgical procedures are documented along with the woman's menstrual history, her current contraception methods and whether she is pregnant (and, if pregnant, the number of weeks of gestation).

According to Green (1988), there are two objectives in acquiring biographical medical and sexual information:

The first is to identify and delineate specific historical information and any acute complaints that may require medical investigation and/or treatment.... The second objective of the history is to guide the medical-legal examination to specific areas that may yield corroborating physical evidence (53).

This information, then, provides a legal record of the identity of the victim along with information to guide the examiner in her investigation and to help determine treatment. For example, from a treatment perspective, if the woman is using birth control pills there is a lower risk of pregnancy and she may not require the 'morning-after pill'.

There are a number of medical reasons cited for gathering information about the woman's menstruation cycle. The time of the last menstrual period is important, according to Green,

because the time in the menstrual cycle may influence some forensic data such as sperm motility and recovery. Current menses may be a nontraumatic source of blood found in the vagina. From a treatment perspective, the last menstrual period (including a notation about the regularity of cycling) has obvious

implications to assess pregnancy risk or the possibility of preexisting pregnancy, which could preclude the use of some medications for STD prophylaxis (1988, 56).

According to Green, this information is obtained in order to assist in the recovery of forensic medicine and to assess treatment needs. For example, sperm motility could be lower depending on the woman's menstrual cycle. As well, menstrual blood could be mistaken for signs of vaginal injury; any inaccuracies in one part of the diagnosis could cast doubt on other findings of the examination. Establishing where a woman is at in her menstrual cycle can also help determine the possibility of a pre-existing pregnancy. For the most part, however, Green's suggestions point to the benefits for the Crown Attorney of receiving this information. Collecting this type of information can also be used to invalidate a woman's claims (and the Crown Attorney's case). For example, Dr. David M. Paul, an expert in forensic medicine (past president of The British Academy of Forensic Sciences, Coroner to the City of London and the Northern District of London, and Honorary Consultant in Clinical Forensic Medicine, Guy's Hospital and Surrey Constabulary in England) writes:

Many allegations of rape are known to follow consenting intercourse when that act has taken place at about the time of ovulation and subsequent fear of pregnancy arises. In the author's experience this is most common in cases of "delayed first complaint," in which the complaint has been delayed for as long as 14 to 16 days and the expected menstrual period has failed to arrive (1982: 429).

Paul's analysis does not take into consideration that fear of pregnancy may be what motivated the woman to come forward about the rape. The woman may have felt that she

could deal with the rape itself without medical intervention. The possibility of pregnancy, as a result of rape, could be something she felt required medical assistance, whether to abort, determine paternity, or receive general medical care with the pregnancy. Despite the possibility that the woman may have come forward because of the potential of pregnancy, her charge of rape should not be discounted, as Paul seems to suggest. His argument sounds reminiscent of earlier claims that pregnancy was an indication of consenting sex because it was believed that a woman had to enjoy sex in order to become pregnant. Theodric Romeyn Beck and John B. Beck (1860) - about whom we will learn more later - wrote: "It was formerly supposed that a certain degree of enjoyment was necessary in order to cause conception, and accordingly the presence of pregnancy was deemed to exclude the idea of a rape" (239). If a woman claimed she was raped, and a pregnancy resulted, her claims were disqualified.³

Sexual assault history

Taking a sexual assault history comprises the second part of forensic evidence collection. The questions the nurse asks are directed by a two page sexual assault history form (see Appendix A, III Sexual Assault History Form). All information gathered by the nurse is recorded on this form. Here, once again, demographic information is noted. The

3. During the 1800s there was a shift regarding beliefs about women's enjoyment of sexual intercourse. While prior to this period it was believed that women could attain sexual satisfaction, during the 1800s theories surfaced stating that women were incapable of reaching complete sexual satisfaction. See Thomas Laquer (1987), "Orgasm, Generation, and the Politics of Reproductive Biology" for a discussion of the theories regarding women's ability for enjoyment of sexual intercourse.

admission time of the woman to the emergency room and the time of the physician's arrival are recorded. The nurse asks the woman specific details about the sexual assault. This includes the location, date, time of the assault, and the number and sex of the assailant(s). As well, the nurse asks the victim if she has changed her clothes since the assault and, if so, whether the clothes are still available for inspection. If the clothes are available it is important to note whether they have been washed or repaired.

The nurse is also required to ask the woman about any physical resistance she attempted or completed during the assault. For example, if she has bitten, scratched or hit her assailant. The assumption is that the woman may have left marks on the assailant or she may have acquired skin or hair samples from her assailant under her fingernails. Other information considered relevant are personal injuries acquired by the woman during the assault and whether objects were used to injure her or used to threaten her and achieve compliance. Verbal threats that the assailant made and areas of the woman's body the assailant touched are recorded. Next, the nurse asks the woman to describe those physical activities that could be designated as sexual. For example, did her assailant attempt and/or complete penetration of her vagina, anus, and/or mouth with his penis? Did the man ejaculate, wear a condom or use lubricant, or perform oral sex?

The woman is then asked to detail the sexual activities she participated in during the week prior to the assault. For example, did she engage in heterosexual intercourse and did this include vaginal, oral, or anal penetration by a man's penis? The time and the use of contraceptives during these activities are noted. The woman is also questioned about

whether she has douched, showered, bathed, defecated, or voided between the time of prior intercourse and the sexual assault. The same information as outlined above, with regards to the assault, is recorded for the period between the assault and the collection of evidence. An additional question included for this period is whether any type of spermicide was used.

The nurse will also note whether the woman was menstruating at the time of the assault and/or at the time of the examination. Vaginal bleeding or discharge prior to and since the assault are recorded.

What is interesting to note is that the same type of information is requested regarding non-consensual sexual activity and consensual sexual activity, this points to the indistinguishable nature of traces of matter that are involved in heterosexual sexual activity, be it consensual or non-consensual. Sperm is sperm, whether or not it comes into contact with a woman's body during legal or illegal sexual activities. I will develop this point and the implications of it more fully later on.

The forensic examination

The clothing (if any) that the woman was wearing at the time of the assault is crucial evidence. If she is still wearing these clothes when she arrives at the treatment unit they are collected as evidence. Clothing is collected by having the woman stand on two layers of paper. She removes each piece of clothing separately and each article is individually bagged and labelled. The clothing is bagged “over paper to avoid loss of trace material”

(Instructions for Evidence Collection, Appendix 1, A). When the woman is finished disrobing, the top piece of paper is carefully folded and labelled. All of this material is collected in Bag #1. The woman is given a hospital robe to wear for the duration of the examination. Women are asked to bring in a change of clothing to the hospital because their garments will be kept as evidence.

Some suggestions made by medical experts on the significance of collecting the woman's clothing reflect perceptions of rape as an aggressive crime. The removal of clothing is assumed to be 'against the woman's will'. Paul (1982) writes:

Certain fragile articles of clothing such as tights and stockings are very likely to sustain damage if they are forcibly removed against resistance, and buttons and button holes are likely to be torn off or damaged when coats, blouses, shirts, jeans, and skirts are forcibly removed. The history of forceful removal against resistance is rather at variance with a complete absence of damage to the clothing (433).

Paul's argument ignores the reality that there are a variety of reasons a woman might remove her clothing herself or might permit her assailant to remove it in a manner that would not damage the clothing. For example, the act may have been mutually consenting when the woman disrobed or was disrobed. Another example is that she could have been sleeping in the nude. As well, out of fear, she may have removed her clothing or allowed her assailant to remove her clothing in a compliant manner. In addition, the woman simply may not have wanted her clothing to sustain damage. The notion of what constitutes violent removal of clothing is also questionable. Popular media representations often show, in moments of passion, clothing being ripped off the soon to be (female) lover's

body as acceptable, normal sexual behaviour. Damaged clothing is not a stable signifier of either consensual or non-consensual sexual experiences.

After the clothing and loose trace material have been collected, a thorough examination of the woman's body commences. First, swabs of the woman's mouth are taken. This is done by inserting a swab into the woman's mouth and "thoroughly rubbing along gum and teeth". If oral penetration occurred during the rape a pharyngeal swab is taken to test for gonorrhoea. The woman is asked to rinse her mouth thoroughly with 10 millilitres of distilled water. The woman spits this into a container and it is kept for testing. At least five minutes after the oral rinse, a saliva sample is taken by having the woman spit onto the middle of a saliva collection card. After the saliva sample has air dried, it is preserved in an envelope for testing. Again, these tests are not necessarily conclusive. If the woman has brushed her teeth, gargled, or consumed food or drink, identifying matter may not be present.

'Foreign' material on the body of the woman is collected. The site from which it is collected is recorded on the documentation sheet. For example, if the woman scratched the assailant, finger nail clippings are collected. If the man ejaculated or licked the woman's body, his seminal and saliva stains are taken from her body for testing. Again, the results of these procedures are dependent on the woman not having 'cleaned herself up' after the rape.

Saliva-like stains may also be found on areas of the woman's body where the assailant may have bitten her. Bites that may have occurred during the sexual assault must

be distinguished from 'love bites'. A love bite is "the result of a mixture of suction and tongue pressure and has the appearance of a mass of 'petechial' type capillary hemorrhages..." (Paul, 1982: 434). Paul claims that the true bite "is an impact bruise and has the shape of the impacting teeth" (1982: 434). Alec Samuels, a lawyer in England, also comments on the "love bite" and samples found in clippings from rape victims' fingernails. Samuels' comments are not surprising given the title of his article, "Defending a Rape: the Forensic Scientific Element". Samuels' interests seem to lie in vindicating rape, that is in making rape acceptable. His work is not meant to defend the 'innocent' man falsely accused but rather to exonerate a man's actions of rape in a court of law. On the subject of evidence of 'love bites' and nail-clipping samples, Samuels comments as follows:

A quite severe love bite is not inconsistent with consent. The evidence of what was found in *V*'s nail clippings, eg skin from *D*, may indicate vigorous self defence as being more likely than playful but only coy and consenting 'resistance' (1983: 314).

The meanings, therefore, of saliva stains, seminal stains, and material under finger nails can be ambiguous if the man has agreed that intercourse took place. They do not necessarily imply consent or non-consent. Such evidence, then, is only helpful when the accused denies any sexual activity with the victim.

Hair specimens are also collected during the examination. The instructions state that about fifty hairs should be collected, ten of which are plucked from the woman's scalp. The rest of the hairs are collected by having the woman massage her scalp and then brush

her hair with a comb provided in the kit. These hairs are collected in order to test for foreign hairs on the woman's body.

The instructions direct the examiner to collect blood samples: up to five tubes of five millilitres of blood each. Two of these are for grouping and one is for drug and alcohol analysis. Again, the interpretation of these tests are open to debate. If the woman was drunk or stoned, it could imply a number of possibilities. It could be interpreted that she was not mentally capable of consent. The use of these substances could also be used in court by the defence attorney to infer the 'low' moral character of the victim as part of an attempt to damage her character. Other tests on the blood may include Venereal Disease Research Laboratory tests and serum Human Chorionic Gonadotropin (this test looks for the hormone produced by the placenta during pregnancy).

The next part of the examination is conducted in a similar manner to a gynaecological examination, with the woman lying flat on her back on an examining table with her feet in stirrups. The woman slides to the edge of the table for the doctor to perform this part of the examination. The first part of the gynaecological examination involves observing, and taking samples from the genital and anal areas of the woman's body. Pubic hairs are cut and swabs of the external genitalia are taken. This is done to collect evidence of seminal and saliva like deposits that the assailant may have left on the woman's body. The woman's pubic hairs are combed and collected on paper so that the forensic scientist can observe if any of the man's pubic hairs are present. As well, any other foreign material around the woman's genitalia are collected and preserved.

With regards to the gynaecological examination, Green (1988) writes:

The vulva is carefully evaluated for signs of trauma or recent intercourse. Vulvar trauma in the sexually active adult female from intercourse alone is unusual. Most reported vulvar injuries occur in children and elderly victims.... The examiner should be alert to some of the subtle signs of recent sexual activity, which include engorgement of the labia and clitoris and erythema of the posterior fourchette. Engorgement usually fades in one to two hours after coitus, while the erythema may be present for several hours. These signs are somewhat nonspecific because consensual intercourse or manual stimulation may also produce engorgement and/or erythema but their presence should be noted because they may help confirm the history (65).

Signs of recent sexual activity include “engorgement of the labia and clitoris and erythema of the posterior fourchette,” signs which, however, also correspond to legal sexual behaviour. And, these are signs that disappear quickly. A loophole for the ‘falsely accused man’ is that a second person is not needed to produce these signs - they may be self-produced through masturbation.

Examining the hymen is another aspect of the examination. On the subject of the hymen, Green (1988) writes that “tremendous individual variation in morphology and elasticity exist and can complicate the medical-legal evaluation” (65-66). These differences among women pose a problem for medical-examinations. There is not one scientific yardstick that can be used to measure women's hymens. Indeed, there are a variety of classifications for different shapes and forms of women's hymens (Green, 1988: 66). As Green notes, an “assessment of elasticity and maximum distensibility” (1988, 66) of the hymen should be made because “what appears to be an intact hymen with a small opening may stretch to a remarkable degree without injury; a ‘normal’ hymen is thus not

synonymous with virginity” (1988, 66). What, then, can this aspect of the examination tell us?

Next, the doctor inserts a vaginal speculum into the woman's vagina and two swabs of the vaginal fornix are collected. A cervical swab and smears for gonorrhoea and chlamydia are taken, however these swabs are not included in the forensic evidence kit. A motility exam is done to check for the presence of motile sperm. Markers of recent sexual contact include “the presence of motile sperm, sperm heads, and the level of acid phosphates” (Ledray and Arndt, 1994: 10). Green cautions the examiner that “care should be taken to collect fluid from the posterior vault of the vagina and not from the endocervical canal, because intact sperm have been recovered from the cervix up to seventeen days after coitus” (1988: 66). After “all the internal structures have been examined, the vagina should be inspected” (1988, 66). Worthy of note is the terminology used to describe women’s reproductive organs. The term “vault” used by Green seems to imply that what would be kept or stored are valuable and need protection. Is it sperm that are so valuable and in need of protection? The body, in Green's writing, is seen as a composition of different structures to be inspected, in the same way that a building is inspected to see if it is intact, safe for occupation.

As Green indicates, a positive finding of sperm “only confirms that a sexual act took place, not that a rape has been committed. Conversely, the absence of ejaculatory material disproves neither coitus nor rape” (1988, 100). According to Green, semen was not found in “25 percent to 30 percent of otherwise well-substantiated rape cases” (1988, 100).

There are a number of factors that may limit the recovery of semen and spermatozoa (a marker for semen): the man may not have ejaculated; the man may have used a condom; the woman may have douched, washed, or bathed, and/or there may have been a significant amount of time between the assault and the examination (Green, 1988: 100). Spermatozoa may not be present for the same reasons. Additional factors that may account for the non-presence of spermatozoa are impaired spermatogenesis. Impaired spermatogenesis can be due to a variety of conditions from testicular irradiation to chronic alcoholism. Depleted stores (this may be due to frequent ejaculation), and impaired delivery (this includes congenital abnormalities, trauma, and surgery such as vasectomy) can limit the detection of sperm (Green, 1988: 101).

According to the classification Green cites, an assailant who does not ejaculate is labelled as having a “sexual dysfunction” and the absence of ejaculation is termed an “ejaculatory failure”, a failure I would postulate likely welcomed by the woman who has just been raped. As well, ejaculation may not be the aim of the assault and it may not be seen as a failure by the assailant.

The last part of the forensic examination requires five millilitres of distilled water to be placed into the woman's posterior vaginal fornix through a syringe and then aspirated and placed in a container for testing. If anal penetration occurred, swabs from the woman's anus are similarly taken. After the anal area has been cleaned, a rectal swab is taken. Approximately ten millilitres of urine is collected for drug and alcohol analysis and pregnancy testing.

General examination

The last part of the documentation required for the sexual assault evidence kit is the general examination form (see Appendix A, V. General Examination Form). This is a descriptive account, provided by the nurse or physician, of the physical examination. Here the nurse records her observations of the woman's physical injuries and her emotional status. In addition, diagrams are provided to record the type, size, shape and colour of the woman's injuries. This includes noting injuries to the labia majora and minora, posterior fourchette (a thin fold of skin at the back of the vulva) and introitus, hymen, vagina and cervix, uterus and cervix, and the anus and rectum. Alternative diagrams are provided for male patients and the prepubertal female.

Treatment guidelines

The last stage of the sexual assault examination is treatment guidelines (see Appendix A, VI Treatment Guidelines Form). The main concerns of treatment include the possibility of sexually transmitted diseases such as gonorrhoea, chlamydia, Hepatitis B, and HIV. As well, the 'morning after pill' is offered if pregnancy is considered a possibility and tetanus shots are offered for lacerations.

The woman is encouraged to return to the unit seventy-two hours after the examination to be examined for late developing bruises. Also, two weeks from the assault, tests for gonorrhoea and chlamydia are repeated (one week if not done upon initial

examination). Six weeks after the initial examination, HIV and Venereal Diseases Research Laboratory tests are performed. The woman is also offered follow-up counselling.

Making a statement

After the sexual assault evidence examination, the woman decides whether she would like to report the assault to the police. As mentioned earlier, since the introduction of the Treatment Unit in the Ottawa Area, women now have six months to decide if they want to make a formal complaint to the police. If a woman does decide to report the assault, she goes to the police station where she makes a statement. The statement is a detailed written and signed document of the woman's account of the sexual assault. This includes what happened during the assault, where and when it happened, identification of the assailant, a description of any weapons used, what the woman said and did, and what the attacker said and did during the assault (Department of Justice, 1988: 18). In addition, the woman will be questioned by the police about the details she provided. This will include details the woman may have omitted as well as clarification of details. These questions are documented in either a written or recorded format (Ellis, 1988: 36-38 and Department of Justice, 1988: 18).

The evidence that is gathered through the use of the sexual assault evidence kit and police procedures determine whether or not the Crown Attorney will decide to prosecute the assailant. The woman becomes a witness for the Crown Attorney.

Concluding thoughts

The aim of the sexual assault evidence examination is to determine if there is any physical evidence to corroborate a woman's story of sexual assault. However, supporting evidence is premised on notions of sexual assault as physically violent.

The objectives of the examination, as stated earlier, are to identify the accused, determine the amount of force used, and to establish the time of the assault. Identifying the accused is necessary if someone is to be charged with having committed a sexual assault. Forensic evidence may be helpful if there is not an identifiable accused or if the accused has denied having had any contact with the victim. As has been well established, however, most victims know their assailant(s).⁴ Forensic evidence may be helpful in cases of acquaintance rape when the accused denies having had sexual contact with the victim. However, in stranger-rapes, forensic medicine can only be helpful if a suspect has been found and identified and he denies having had any physical contact with the victim. However, if the assailant admits that sexual contact took place, the sexual assault evidence kit cannot make any significant contribution to the woman's case. Indeed, if the suspect knows such evidence exists, he may be more likely to admit to having had sexual contact with the victim. Finally, if a suspect cannot be found, evidence provided by the kit cannot determine who the accused is; this would only be possible if a database existed that

4. According to Statistics Canada's 1993 Violence Against Women Survey, 42% of all adult women in Canada had experienced, on at least one occasion, non-spousal sexual or physical assault. Fifty-five percent of these assaults were committed by a person known to the woman. Not included in these figures are spousal assaults. As of 1993, 29% of women reported that they had been either physically or sexually assaulted by either their husbands or common-law partner (Trainor, Tremblay and Verdon, 1995: 104-106).

recorded everyone's DNA, a prospect which is not, at present, likely, or wanted. As stated earlier, police do not always send the forensic evidence collected for testing. In these circumstances, the examination is entirely pointless.

With regards to establishing the time of the assault, the sexual assault evidence kit can only be used if the assault occurred within the previous seventy-two hours. And, once again, this evidence is only useful if the accused has denied that any physical activity has occurred between himself and the victim. For example, the assailant could admit that sexual contact or some other form of physical contact occurred between himself and the victim but that it was not sexual assault but, rather, it was consensual sexual activity. If this is the case, the point of the examination is to determine whether or not the contact was legal sex (consensual) or illegal rape (non-consensual). The evidence examination only lends support in cases where the woman was pushed, shoved, and/or beaten, and if she resisted physically and acquired pieces of the assailant's flesh or other 'foreign' matter on her body.

But how does the sexual assault evidence kit help in determining the truth of women's accusations when there is no 'violent' struggle? Is the story then one of legal sexual behaviour? If a woman is lying in bed with her lover and he rolls her over and has sex with her, despite her attempts to push him away, what could the sexual assault examination reveal here? It could identify the assailant, the time, and the place, but would there be any dispute about these activities? The man involved would likely admit that sexual intercourse took place; the debate would be about whether or not the activities were

consensual. How do we determine the truths of such situations and what is really at stake?

The type of evidence that is solicited through the sexual assault evidence kit is premised on certain notions of what constitutes sexual assault. How did we arrive at employing this method of examination in sexual assault cases? How has it become so important to solicit such precise and detailed physical signs of sexual assault? And why are *these* signs the ones that are indicative of sexual assault?

Partial answers to these questions can be gathered by reflecting on the history of legal definitions of rape and the role of forensic medicine in rape cases. In Chapter Three, I turn to these histories. In Chapter Four, I further explore the distinctions between legal heterosexual sex and illegal heterosexual rape that are enforced through the sexual assault evidence kit.

Chapter Three

Recalling History: Situating Forensic Medical Examinations of Rape Victims

'[B]y the Jewish law, [rape] was punished with death, in case the damsel was betrothed to another man; and in case she was not betrothed, then a heavy fine of fifty shekels was to be paid to the damsel's father, and she was to be the wife of the ravisher all the days of his life...(Sir William Blackstone, quoted in Backhouse, 1983: 20!).

Her value-invested form amounts to what man inscribes in and on its matter: that is her body (Irigaray, 1985:187).

Introduction

In the last chapter, I described contemporary forensic evidence examination methods used to gather evidence of heterosexual sexual assault from women's bodies. Women who have been recently sexually assaulted are urged by those involved in the criminal justice system (police and lawyers) to submit to this medical examination when they speak out about what has happened to them. The sexual assault evidence kit is promoted as a tool for justice. How, though, did we arrive at developing and implementing this tool?

A simple answer is that evidence is needed if we want guilty men to be prosecuted for sexual assault. In part, it is believed that forensic evidence can play an integral role in determining the truth of the claims of the women and men involved. By looking back on the history of medico-legal knowledge of rape we can begin to make sense of how we came about employing this method of examining rape victims.

In this chapter, I examine the development of the science of medico-legal knowledge as it pertains to the examination of women who have been raped. More specifically, I look at bits and pieces of the genealogy of the crime of sexual assault, with particular attention to the role of corroborative evidence and the attention given to the hymen as a sign of virginity. Finally, I conclude the chapter by looking at Theodric Romeyn Beck and John B. Beck's assessment of two rape cases in the United States in the nineteenth century. I argue, first, that historically the main emphasis was to ensure that 'innocent' men were not falsely convicted and, second, medico-legal knowledge reflected, and served to enforce, women's value as objects: as virgin, mother and prostitute. The arguments in this chapter draws on the work of French feminist Luce Irigaray's reformulation of Marx's theory of commodification (1985: 170-191).

The work in this chapter is fragmented. In part, this is due to the lack of historical work on the medico-legal literature on rape. As Clark and Crawford (1994) have pointed out, there has been little work done to situate medical legal knowledge in general within its social and political histories. This is particularly true regarding the medico-legal history of rape. Indeed, within Clark and Crawford's (1994) edited collection, *Legal medicine in history*, only a few references are made to the social and political histories of medico-legal knowledge as it pertains to rape. The two books made reference to in this chapter represent some of the few books available in English from the 1800s that deal with rape: "Disputed Loss of Virginity," in *Handbook of Forensic Medicine* by Johann Ludwig Casper (1861), a doctor and professor of forensic medicine in Berlin, and "Rape," in *Elements of Medical*

Jurisprudence (1860) by Theodric Romeyn Beck and John B. Beck, both medical practitioners in the United States. To date, neither of these works have been analyzed in the social sciences.

Mills' (1982) article, "One Hundred Years of Fear: Rape and the Medical Profession," is, to my knowledge, the only work that specifically places medico-legal literature on rape within an historical framework. Mills' article examines forty-one articles regarding the medical and evidentiary aspects of rape between 1880 and 1980. While critical of the historical development of forensic medicine, she focuses solely on the prejudicial attitudes of physicians involved in forensic examinations. The basis for performing such examinations remains unquestioned.

Rape, abduction and seduction

In the previous chapter, I outlined contemporary sexual assault laws in Canada. Now, I briefly look back at the genealogy of these laws in order to situate them historically.

In 1275, the seriousness of the crime of rape was reduced from a felony offence to a form of trespass in English law. The penalty was lowered to a fine and a maximum of two years imprisonment. This statute stated that "none shall ravish nor take away by force any maiden within age (neither by her own consent, or without) nor any wife or maiden of full age, nor any other woman against her will" (quoted in Backhouse, 1983: 201). Soon afterwards, however, the crime was reestablished as a capital felony. Over the years, the

crime of rape underwent various changes with regards to the age of the victim, the degree of force used, evidence of consent and the purity of the woman involved. On paper at least, the law went as far as to criminalize the rape of concubines and harlots (Backhouse, 1983: 201-202). Given that concubines or harlots were not likely to be considered of 'good fame' it is hard to imagine that many men were charged with raping these women. The case of the gang rape of Ellen Rogers in Toronto in 1858, for example, demonstrates how a woman's claims were judged based upon her sexual value. Ellen Rogers was not legally married; she cohabited with a man known for gambling. Around midnight on December 13, 1858 she claimed that a crowd of men came to her home and raped her.

At trial, defence counsel for Robert Gregg, Henry Eccles, QC, pointed out that his client was from a respectable family, whereas the complainant's reputation was such that no reliance could be placed on it: 'let a woman be ever so abandoned, she was entitled to the protection of the law; but ... though she was entitled to the protection of the law, she was not entitled to credit; and no jury could feel justified in convicting on the bare assertions of those who, while telling their story, themselves admitted that they were of the loosest grade and character.' (Backhouse, 1983: 223)

The jury found the men not guilty of the charge of rape. For the same incident, one of the men was also charged with burglary and break and enter. Ellen Rogers took the stand once again and, "told the court she did not think it was any use giving evidence, since the lawyers and witnesses had all said she was not worthy of belief"" (Backhouse, 1983: 224). Ellen Rogers was valued as a concubine. Not only was she living with a man to who she was not married, but the man himself was of ill-repute, a gambler. Ellen Rogers' relationship with this man served to define her value within the community.

Historically comparable offences to rape in criminal law have been the crimes of abduction and seduction. In the Middle Ages, the capture of a daughter "against the father's will" was a property crime of abduction. In England, the first statute regarding abduction was passed in 1285. Backhouse outlines the purposes of this legislation:

(T)he thrust of such legislation was to protect the father's property interest in his daughter. Paternal control was necessary in order to establish marriage alliances and to protect the females of the family from sexual advances of social inferiors. The father had the right to sue the offender. The violation was abduction against the father's will; the consent of the woman was immaterial. The legislation provided that she would be disinherited and disentitled to all her claims against her father's property (1983: 203-204).

Abduction laws offered little, if any, protection to daughters of wealthy families who wanted to engage in consensual sexual relationships with men. The purpose of the law of abduction was to secure the property rights of wealthy fathers over their daughters.

In addition to abolishing the entitlement of a future husband to a dowry, abduction laws established compensation for damages to property (the daughter) to be paid to the owner of the property, her father. The amount of compensation "dependent on the woman's economic position and her desirability as an object of an exclusive sexual relationship" (Clark and Lewis, 1977: 116). This process was obviously not intended to protect a women from rapists. Indeed, a rapist could marry his victim if he so pleased and if it satisfied the father (Clark and Lewis, 1977: 118).

Legally, it was inconceivable that a woman who was not the property of a husband or father could be abducted. Abduction laws were only concerned with heiresses. Clearly, then, abduction laws were concerned with property and women were valued as

commodities owned by men.

The seduction law, created in Canada in 1866, is an example of the legal protection of the 'pure', 'uncorrupted' chaste young girl.

The act of 1866 made it a crime to seduce and have illicit connection with any girl of previously chaste character who was above the age of twelve and under the age of sixteen. It also prohibited seduction of an unmarried female of previously chaste character and under the age of eighteen, under the promise of marriage. The maximum penalty for these offences was two years. In 1887 the provision on seduction under the promise of marriage was altered to raise the age of the woman to twenty-one, so long as the seducer himself was over twenty-one. In 1890 the seduction of a ward or female employee became an offence (Backhouse, 1983: 229).

Clearly, seduction laws were meant to protect virginity - not the young women themselves. If the aim of the law was to offer protection to the young women from unwanted sexual contact, virginity would not be an issue. "Those women who were no longer chaste were denied protection of the criminal law. Having experienced non-marital intercourse, such women were no longer considered passionless" (Backhouse, 1983: 230). The catch-22 was that an uncorrupted female, out of shame, would not want her fate known in a court of law (Backhouse, 1983: 232).

The seduction law also operated to regulate consensual sexual behaviour. As Dubinsky has noted:

(T)he seduction law could be used to regulate the sexual behaviour of both parties, sometimes putting an end to a relationship not sanctioned by a woman's parents, other times channelling sexual activity into its only acceptable form, conventional marriage. (1993, 77)

Dubinsky (1993) provides an example of how seduction laws served to regulate

consensual sexual behaviour with the case of Beatrice A. of Woodstock, Ontario in the late nineteenth century. Beatrice had been dating a “coloured” worker, Thomas M., for over one year and eventually became pregnant. Thomas asked to marry Beatrice, but Beatrice's parents disapproved of the relationship. Thomas was found guilty of seduction despite “Beatrice's admission that she consented to sex, and Thomas's willingness to 'fulfil his obligation' by marrying Beatrice ...” (Dubinsky, 1993: 76-77).

During the nineteenth century, Canadian rape law began to stray from its English influence with more severe penalties for those found guilty and with changes to the type of proof required for convictions. For example, in Canadian law the penalty for the offence of assault with intent to commit rape was increased while in England the rupturing of the hymen was still a necessary piece of evidence in some courts. Despite these changes, for the most part, victims in rape cases in Canada were dependent on either their fathers or husbands. (Backhouse, 1983: 224-225) Likely, this was not because independent women were not being raped to the same extent as dependent women but, rather, reflected popular social values regarding women and sexuality. In order for a women's sexuality to be damaged it had to be the property of a man. An independent woman's sexuality was not owned by a man.

In 1892, with the introduction of the first Canadian Criminal Code, for first time, parliament codified a complete definition of rape.

It was defined as 'the act of a man having carnal knowledge of a woman who is not his wife without her consent, or with consent which has been extorted by threats or fear of bodily harm, or obtained by personating the woman's

husband, or by false or fraudulent representations as to the nature and quality of the act' (Backhouse, 1983: 234).

Worthy of note is the sanctioning of a husband's right to rape the woman who is his wife.

Historically, the definitions of illegal heterosexual sex have had different social meanings. Illegal heterosexual sexual conduct such as abduction, rape, attempted rape and indecent assault circulated with the concern of protecting property, securing paternity, and regulating sexual conduct. Women were considered property, owned by fathers or husbands. Primary concern was not with the consent of the women involved. Indeed, with regards to seduction laws the fact that a woman consented was considered immaterial.

Irigaray writes:

The law that orders our society is the exclusive valorization of men's needs/ desires, of exchanges among men. What the anthropologist calls the passage from nature to culture thus amounts to the institution of the reign of hom(m)o-sexuality. Not in an "immediate" practice, but in its "social" mediation. From this point on, patriarchal societies might be interpreted as societies functioning in the mode of "semblance." The value of symbolic and imaginary productions is superimposed upon, and even substituted for, the value of relations of material, natural, and corporal (re) production (1985: 171).

Irigaray argues that this is because the work of men has been assigned value within the social order. In turn, women have "value only in that they serve as the possibility of, and potential benefit in, relations among men" (Irigaray, 1985: 172). The status of women in such a social order, according to Irigaray, is as mother, virgin and prostitute. These symbolic figures of women are not grounded in material women's bodies but rather exist in terms of men's relationship with themselves and other men. For example, in early rape laws, retribution was to be paid to the father or husband if a woman was raped, not to the

woman who had been raped. The actions towards a woman made the exchange between the two men possible while the woman herself did not figure into the transaction. As

Irigaray writes:

The production of women, signs, and commodities is always referred back to men (when a man buys a girl, he “pays” the father or the brother, not the mother...), and they always pass from one man to another, from one group of men to another. The work force is thus always assumed to be masculine, and “products” are objects to be used, objects of transactions among men alone (1985: 171).

It is from the figures of mother, virgin, prostitute that so called feminine sexuality is fashioned and valued. The mother stands for private property, the “proper”; the virgin represents exchange value; and the prostitute symbolizes the value of the used and exchanged body. In a sense the mother becomes a tool, the virgin a symbol, and the prostitute represents a pure commodity for exchanges amongst men.

Irigaray does not posit Mother, Virgin, Prostitute as the truths of women. Rather, for Irigaray, there is no Truth of Woman. These truths of Mother, Virgin, Prostitute serve the desires of men. Woman is a myth that functions within the social economy and serves the subject, man. This mythical Woman is a material object within the social order. Indeed, the historical notions that constituted a woman as a raped woman had little to do with a woman's perceptions regarding their sexual relations with men. Rather, these views reflected men's notions of when and with whom they should be having sexual intercourse.

Corroborated evidence

Evidence is an essential part of law, more so when an accused refutes the charges. Evidence can help to either prove or disprove whether illegal activity has taken place. Over time, the nature of what constitutes evidence for any type of criminal charge has changed. For example,

In early medieval Europe, including Britain, the disputed facts in a criminal trial were usually decided by ordeal or combat. Divine intervention was thought to ensure that the truth would be revealed by the outcome of the battle, submersion in water (the innocent sank), or exposure to fire (the flesh of the innocent healed quickly) (Crawford, 1994: 94).

In the twelfth century these methods were replaced by trial by jury in England because the Church began to doubt the accuracy of such techniques. Here jurors played the twofold function of arbiter and witness. Their knowledge of local events was to contribute to their verdicts. Between the twelfth and fifteenth centuries, decisions were based on the evidence heard by witnesses in formal proceedings.

Continental Europe, on the other hand, implemented an inquisitorial method of investigation to replace trial by ordeal. Here,

the state did the prosecuting and professional judges did all the adjudicating... Judges interrogated witnesses privately, established the facts of a case, and decided the verdict (Crawford, 1994: 96).

In part, this was to do away with the subjective process of decision-making; the law of proof was thought to offer an objective measure upon which judges could base their decisions. The English standard, on the other hand, “was that jurors should be persuaded in their 'conscience' or ... convinced 'beyond a reasonable doubt'” (Crawford 1994: 96).

The continental method used an arithmetic method to achieve its 'objective' delineation of evidence. Here,

two good eyewitnesses constituted a full proof, as did a confession; one unobjectionable witness made a half-proof (Crawford, 1994: 96).

Adult women, among others, did not constitute a good eyewitness:

Less reliable types of evidence, such as the testimony of women, children and paupers, and various indications (*indicia*) such as a physiognomy, common repute and circumstantial evidence, were held to provide lesser fractions of proof which might, in combination, amount to half proof (Crawford, 1994: 96).

Because it was often hard to attain the two-witness standard demanded by law, a half-proof measure was in place; a suspect could be tortured in order to extract a confession and, on this basis, a capital conviction could be secured.

Given women's unequal position in relation to men in European society, it is not surprising that a woman's testimony would not be sufficient for a conviction. The necessity for corroborated evidence, outlined in 1771 by William Eden, the author of a criminal law text, states:

the offence of rape is secret in its kind, and generally confined to the knowledge of the party injured ... The charge, however, is in most cases supported by the collateral, and concurrent testimony of time, place, and circumstances; and the mere affirmative oath of the woman is rarely thought sufficient to convict (quoted in Backhouse, 1983: 202-203).

Given the secrecy of rape, what helped to authenticate a woman's claims? Edward East, an early treatise writer on English law, wrote in 1803 that the woman is to be believed if she meets the following criteria:

If the witness be of good fame, if she presently discovered the offence, and made pursuit after the offender; if she shewed circumstances and signs of injury, whereof many are of that nature that only women are proper examiners; if the place where the fact was done were remote from inhabitants or passengers; if the offender fled for it ... (quoted in Backhouse, 1983: 203).

In turn, the woman was suspected of lying

If she be of evil fame and stand unsupported by other evidence; if she concealed the injury for any considerable time after she had opportunity to complain ... again if the place where the fact was supposed to be committed were near to the persons by whom it was probable she might have been heard, and yet she made no outcry; if she gave wrong description of the place (quoted in Backhouse: 1983: 203).

Corroboration was important because only the victim knows what really happened. In order to offer some form of verification of the events, a woman must accurately describe the time and place. Such testimony allows others to contribute to the validity of the claims; others can testify to the victim's or the accused's whereabouts.

In summary, the woman's character and response to the offence led credibility to her claims. The character of the wife or maiden of full age, we can presume, would be of good fame, and the concubine or harlot, of evil fame. A woman's character determined by her sexual relations with men. Her claims of being raped were thought to be valid if she responded by fighting back, by hitting or screaming, and if she let others know of the offence immediately. The quicker the woman was in telling others of the offence, the more chances that some visible evidence could be offered; be it physical injuries or signs of distress such as screaming or crying.

Historically, the nature of what constitutes truthful evidence and a good witness has

changed within the legal domain. How truth could be arrived at reflected socio-cultural beliefs.

Women's bodies and the representational values of forensic medicine

In England, in the twelfth century, it was the role of "four law-abiding women" to perform the examination of raped women's bodies (Paul, 1982: 426). This changed and in the middle ages when physicians began to play a role in the courtroom. For example, in criminal cases in general, in Germany it was

ordained that the opinion of medical men shall be formally taken in every case where death has been occasioned by violent means - such as child murder, poisoning wounds, hanging, drowning, the procuring of abortion and the like (Beck and Beck: 1860, xvi).

Rape was regarded as a serious matter for the whole community: "No case can occur in which public feeling is more warmly or justly excited, than where an attempt is made to injure or destroy the purity of the female" (Beck and Beck, 1860: 188). Beck and Beck do not tell the reader exactly why the public became so excited. In this section, I examine what is at stake for the community to cause such uproars when a woman is raped.

It is not surprising, given the high value attached to the virgin, that a great deal of attention in early forensic medicine was given to searching for some guarantee of virginity. The hymen became such a guarantee. The hymen signified that the product had not been tampered with before purchase. Casper (1861) suggests how a woman was valued if her hymen had not been ruptured before marriage. He writes that the hymen

has from time immemorial been very properly regarded as the chief token of

virginity ... The ancient Jews proudly carried about amongst the relatives the shift of the newly-married wife, with bloody traces on it of the recent injury to the hymen, as a proof of chastity preserved till then, and even yet this custom, so prevalent in the East, is a popular custom in Naples, where the "shift of honour" (*camiscia dell'onore*) is exhibited to the friends. The legislators have adopted this popular view, and at all times and among all peoples have threatened the severest punishments of the law against all immoral destruction of virginity (277).

"The bloody traces" were held up proudly in order to mark the change in the symbolic form of the woman, as Luce Irigaray suggests, from exchange value (virgin) to use value (wife or mother). The traces of the woman's blood marked her as pure and in turn marked her representational value to the man she had married. The honour of the woman was maintained in the shift from virgin to wife.

For Irigaray, virginity represents "pure exchange value," a body with yet no mark of use-value on it. The virginal woman is purely symbolic; use value becomes attached to her body only once she has been exchanged and penetrated.

She is nothing but the possibility, the place, the sign of relations among men. In and of herself, she does not exist: she is a simple envelope veiling what is really at stake in social exchange. In this sense, her natural body disappears into its representative (1985: 186).

Within these social relations woman as virgin "by the *violation of an envelope*: the hymen" (Irigaray, 1985: 186), takes on the form of another commodity: mother. Exchange value is turned into use value, private property.

The hymen as a sign of virginity proved unstable and unreliable. Beck and Beck (1860), caution that the hymen "may be wanting from original malconformation or it may be destroyed by disease or some other cause, and yet the female still be pure" (190). In

addition, they warn: “This membrane may, on the other hand be present, and yet the female be unchaste; nay, she may become pregnant without having it destroyed” (Beck and Beck, 1860: 191). Despite the instability of the hymen as a sign of virginity, Beck and Beck state that “we (medical practitioners) are justified... in attaching considerable importance to its presence” (Beck and Beck, 1860: 192).

Casper (1861) also addressed the uncertainty of meaning attached to the presence or absence of the hymen with regards to virginity. Despite his uncertainty, Casper stated: “yet we must not be thereby led astray in determining the value of this sign, which is *the most valuable of all in a diagnostic point of view*” (279, emphasis in original). The presence or absence of the hymen was used to make distinctions between women; a difference between virginal women and women who are mothers or prostitutes.

Casper painted a clear picture of the value of untouched genitalia in his comparison between virginal women and non-virginal women (mothers and prostitutes). Casper writes:

The difference between this condition of the genitals and that which is the result of long-continued sexual intercourse, or of childbearing -the difference between the full, tolerably firm, and close-shutting labia majora of the former state, and the gaping, withered, dirty brownish-yellow labia, between which the withered and often hypertrophied nymphae depend, of the latter, is certainly very evident (1861, 280).

The depiction of the difference between the genitalia of the virgin and mother suggests the different value and meaning attached to women with and without sexual experience. Once deflowered, the mother's genitalia is dirty, withered, like a flower ready to die. The virgin

is firm, ripe, and in full bloom.

According to Irigaray, the mother's responsibility is to "maintain the social order without intervening so as to change it" (1985, 185). Mothers cannot circulate as commodities because this would disturb the social order: "Their products are legal tender in that order, moreover, only if they are recognized within this law; that is, only in so far as they are appropriated by him [the husband]" (Irigaray, 1985: 185). Man, through the use of this commodity (mother), is able to create more products for himself (children). In order to legitimate these new commodities, though, they, the children, must be legal tender. That is, man must be able to guarantee paternity. If the commodity (mother) were to be used sexually by more than one man, the social order would break down because there would be no guarantee of ownership - paternity. It is helpful to remember here, the comments of Sir Matthew Hale in the late seventeenth century: "for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract" (quoted in Backhouse, 1983: 234). Tellingly, until 1983, the spousal immunity clause in the Canadian Criminal Code exempted husbands from being charged with raping their wives.

The signs of defloration and rape are, according to Beck and Beck, not surprisingly, the reverse of the signs of virginity. They write that these signs are to be found only in women who have not experienced their first "connection":

In married women, or libidinous females the detection (of sexual activity) is more difficult, and, in truth, is a great degree impossible, and that whether they accuse or are accused (1860, 197).

For the most part, then, genital examinations were only useful as evidence in rape cases if the woman was a virgin. However, the 'destruction' of the hymen does not necessarily indicate rape.

Beck and Beck do not distinguish only between virginal and non-virginal women. Indeed, they also make distinctions amongst non-virginal women. The way that women were deflowered, the way that women's genitalia were 'used-up', served to mark them as either 'married women' or 'libidinous females'. The prostitute, or the 'libidinous women' is useful, according to Irigaray, only because she has already been exchanged and appropriated. The prostitute guarantees the value of the female body, or as Irigaray puts it:

In the extreme case, the more it has served, the more it is worth. Not because its natural assets have been put to use this way, but on the contrary, because its nature has been "used up," and has become once again no more than a vehicle for relations among men (1985: 186).

The prostitute's worth has already been realized because she has already been exchanged. Though the bodies of mothers and prostitutes are in a sense the same, they are marked differently because the sexual transaction occurred under different circumstances. The Becks continue and write that:

By the term *rape*, however, is understood not only defloration, but a commission of it either against or without the will of the female; and again, the commission of this violence against a person of tender age, who has, as yet, in the legal sense of the term, no will. Here, not only the signs of defloration already enumerated may be present, but also others indicative of the employment of force, such as contusions on various parts of the extremities and bodies. These, however, are compatible with final consent on the part of the female (1860: 197).

How, then, if the signs of rape are "compatible" with final consent can one tell the

difference between rape and sex? And if the hymen is an unstable sign of virginity, why was it allotted such importance? As well, why are distinctions needed amongst non-virginal women? According to Irigaray's theory, these distinctions are one way of marking a product. Some sign was needed in order to proclaim the value of the product and as well the other "legal tender" products (children) that would hopefully be produced. Marriage served the function of the transfer of property generationally; exclusive sexual access to women was desired to guarantee the legitimacy of paternal heirs. In marriage, men were the owners of both wives and children (Clark and Lewis, 1977: 114).

The rape of the virgin, though, was not the sole concern for medical practitioners involved in the forensic detection of rape. Here, again, some sign was needed. In part, the fact that medical practitioners had difficulty establishing what could constitute visible, physical signs of rape likely reflects their beliefs about the ability of healthy females to be violated in such a manner. Casper (1861) writes:

A woman in these circumstances certainly possess a means of preventing, by the movements of her pelvis, the perfect completion of the act of coitus, and the impossibility of this occurring is at once to be assumed, when the woman is a healthy, vigorous, in the full possession of her senses, and the man old, diseased, or feeble (296).

If both parties are of equal strength Casper suggests that rape may be possible. He writes:

Where the strength of both parties is nearly equal, the utmost caution is certainly requisite, surprise, terror, momentary stupefaction, produced by being thrown down on the one hand, and the unusual strength and sexual frenzy on the other, the male side, make the statements of the party violate perfectly credible (1861, 296).

Casper, however, believed that such cases were "rare". Casper offered support for one case

regarding the rape of an adult. In this instance he believed that the woman was “deprived of the power of resistance.” Casper, upon examination, noticed that

The entrance to the vagina was still reddened, and painful when touched and dilated, the hymen was completely torn and bright red; carunculae, still slightly swollen were visible; the fraenulum still existed (1861: 311).

These signs allowed Casper to support the woman's claims of rape. On the other hand, Casper did not support a thirteen year old girl's claim of rape committed by her father. In this instance, Casper did not believe that the young girl was unable to resist. He writes:

She brought forward the accusation against her father, her own father, of having “once, two years ago” (!) come into the bed in which she slept with a younger sister, and violated her. Upon inquiry why a strong girl like her had not cried out and striven to defend herself, she declared that her father had with one hand pressed the pillow on her mouth, and with the other held both of hers!! She said also that she did not quite awake when her father came into bed beside her, but only after he had got on the top of her (1861: 312).

Casper concluded in his report:

That from the appearances found we may conclude that violence has been inflicted upon the genital organs in question by some hard foreign body, and that it is possible that this may have been a male organ in a state of erection, but that the statements of N. make it very improbable that the rape alleged to have been committed upon her took place as she asserts (1861: 313).

Casper's main concern was with physical strength. He is not able to take into account the power differential between the daughter and father.

Not being able to proffer such a parallel sign in non-virginal women as the hymen, medical practitioners concluded that these women's bodies should show signs of a violent struggle. Women, after all, were supposed to understand the consequences of extra-marital sexual activities and would not participate in them on their own accord. Such a high price

was put on women's sexuality that they were expected to fight men's advances - whether it be their father's advances or anyone else's. It would be more heroic to die than to let a man other than their husband, or any man if they were not married, 'make use of their body'. Evidence of bruises and lacerations were required to support a claim of rape because medical practitioners' techniques could not otherwise demonstrate a difference between legal heterosexual sex and illegal heterosexual rape. Medical practitioners had no certain means of telling the difference between legal and illegal heterosexual sex.

Forensic medicine went to great lengths in the nineteenth century to try and produce signs of the raped female body. As Casper and Beck and Beck admit, the signs of virginity, rape and the sexual intercourse were unstable. As objects of examinations, these activities would remain questionable. Truth, however, is a necessary element of criminal justice. And, a man can only be found guilty if he appears guilty beyond a reasonable doubt.

Beyond a reasonable doubt

The comments of Sir Matthew Hale, made in the late seventeenth century, and cited by Beck and Beck, point to the obstacles of dealing with rape in the legal system:

No remark can be more correct than that of Sir Matthew Hale, concerning this crime "It is an accusation," says he, "easy to be made and harder to be proved, but harder to be defended by the party accused though innocent" (1860: 188-189).

The ease with which Hale believes a woman can make a claim of rape, I will leave aside. Rape, as Hale contended, remains difficult to prove. Hale's main contention rests with

defending "the party accused though innocent". As Elizabeth Anne Mills points out in her article, "One Hundred Years of Fear: Rape and the Medical Profession" (1982), in which she surveyed articles on the medical and evidentiary aspects of rape from 1880 to 1980, Sir Matthew Hale's perspective was held by many men and "is evidenced by its appearance in much of the medical literature, even as recently as the 1950s" (33). Mills writes:

Their (medical writers) tone clearly suggested that victims often were not innocent parties to the crime; assumptions of woman as 'liar' or seductress permeated many of the articles. Out of this mistrust stemmed an almost obsessive preoccupation with data collection and corroboration of the woman's testimony. By paying close attention to medico-legal evidence when examining alleged rape victims, physicians made certain that they did not bear the responsibility for convicting innocent men (1982: 30).

Beck and Beck provide a fairly detailed account of two cases of disputed rape that occurred in the early nineteenth century. In the first case, the woman had been extensively examined and the man was acquitted. In the second case, the woman had not been examined and the man was found guilty. It is worth considering Beck and Beck's comments on both of these cases as they amply illustrate whose interests they were concerned with in stressing the importance of forensic examination of rape victims. They were not the medical practitioners involved in these cases, yet the cases were important enough for them to outline in great detail.

In support of Mills' claims outlined earlier, in neither of these cases do Beck and Beck stress the importance of forensic examination in securing a conviction against the accused party. Indeed, the cases they make reference to are 'doubtful' in some aspects. It is

helpful to remember that these are the cases that Beck and Beck provided the most commentary on; no doubt they help support their views on the importance of forensic examinations. In addition, as Mills (1982) points out, "the fear of being wrongly accused of the crime probably affected even the elite (and predominantly male) members of the medical profession" (34). To Mills' comments I would add, the fear of being rightly accused of the crime affected even the elite members of the medical profession.

We learn from the Becks of the case of Sarah Flemming who in 1838 accused two Callaghan brothers, "respectable persons", of having violated and abused her. This was the third time she had made charges against the brothers. The first accusation was against one of the brothers for

an assault upon her daughter, a child of eleven years old, when he was convicted and sentenced to six months confinement. She had been offered money as an inducement not to prosecute, but she refused it (Beck and Beck, 1860: 242).

The second accusation was for an assault on herself and the brothers were acquitted. During this assault "she neither screamed nor bawled. She could not do either, as they fastened a rope around her neck, and stuffed her mouth with hay" (Beck and Beck, 1860: 243).

After a third "alleged" assault, a man and a woman found her exposed and tied to a wall. Sarah Flemming, when questioned, said that

after each of the three Callaghans had violated her, they forced either a stick or some other hard substance, and afterwards the neck of a common black bottle, into her vagina; that they stuffed her mouth with grass and gagged her; that they bound her wrists together, and having tied her clothes above her

head, suspended her by the cords from the railing of the window, where the watchman found her (Beck and Beck, 1860: 243).

Sarah Flemming was examined by a Dr. Howe. The doctor reported that

There were no marks or bruises upon her thighs, nor any appearance of violence about her pudenda. Considerable indentations had been left about the wrists where the strings had been tied, and when a hand was applied to the contusions on her chest, she screamed and appeared to suffer great pain. She expectorated bloody saliva in quantity, and with consummate art developed the several symptoms which may be expected to follow the injuries she pretended to have received (Beck and Beck, 1860: 243).

Despite Dr. Howe's distrust of "her story from commencement" the "extraordinary facility with which she simulated the appearances of diseases, made a strong impression in her favour on the minds of many" (Beck and Beck, 1860: 243).

During her stay in the hospital Sarah Flemming exhibited more symptoms. She lost control over her bladder and expectorated bloody saliva. Upon examination of her vagina, her "parts" were found "in a natural and healthy state" and she herself was believed to have caused the injuries to her mouth by sucking her gums (Beck and Beck, 1860: 244). "She was now taxed with deceit, and accused of having invented a false and horrible tale, with intent to swear away the lives of three innocent men" (Beck and Beck, 1860: 244).

A little later, Sarah Flemming was found to have developed a venereal disease. She said she must have contracted it from the brothers who had assaulted her. The brothers were still in jail and upon examination, were given a certificate that they did not have the "slightest trace of the venereal disease" (Beck and Beck, 1860: 244). Sarah Flemming was committed to the city jail, upon an indictment for perjury" (Beck and Beck, 1860: 244).

In May, in the city jail, Sarah Flemming became very ill; she was having stomach trouble and had an “offensive” discharge from her vagina. Sarah resisted examination but the doctor insisted on examining her. Upon examining her, he

extracted, and found to be a *large rough paving stone!* The miserable woman turned to him and exclaimed, “God forgive you; that is the stone the Callaghans forced into my body, and the doctors at the infirmary could not make it out” (Beck and Beck, 1860: 245).

The stone “must have been lodged for some time in the vagina, as it was thickly coated with a white calcareous incrustation and layers of thickened mucous” (Beck and Beck, 1860: 245). For the next week, Sarah Flemming was deathly ill. To Sarah's detriment, similar stones as the one found in her vagina were also in the garden that the prisoners (of which she was one) had access to and it was believed that Sarah must herself have inserted the stone. In August, Sarah Flemming was convicted of perjury.

On this case, Beck and Beck provide these final concluding remarks:

...yet it should not be forgotten that the lives of the Callaghans might have been forfeited, *had not an immediate examination* been made by Dr. Howe. Not only in Ireland, but I think in some parts of this country, accusations of rape are increasing. They are very readily preferred, and they depend for proof on the testimony of the accuser alone. Should it not be required that an early examination be made in these cases by a medical practitioner, and in default of a speedy application for that purpose, that the charge be proportionably discredited (Beck and Beck, 1860: 246)?

Amplified in the quote is the Becks' interest in refuting women's claims of rape

Before commenting more fully on Beck and Beck's assessment of the case, I turn to the second case they recount. In Philadelphia in 1854, the man

charged with rape was a respectable dentist in that city. The person claiming

to have been violated was a young lady of impeachable character, who was under an engagement of marriage (Beck and Beck, 1860: 247).

The woman had been given ether during an operation that the dentist was performing.

According to this testimony, the dentist, after taking certain indelicate liberties, raised her clothes, passed his arm around her under her clothes, drawing her to the edge of the dentist's chair in which she was sitting, and effected entrance into her person. During this time her eyes were closed; she did not know what was his position nor witness any exposure on his part. She was confident of the penetration of her person, but only from a sense of pain in the part (Beck and Beck, 1860: 247).

The ether had put her in a state that she was not able to resist or cry out. She opened her eyes to find her clothes raised. The dentist returned and told her he would have to remove the tooth. She told him she was afraid of the pain and he gave her more ether.

Later in the evening she told the woman with whom she was staying what had happened and then reported the crime. "The dentist was found guilty by the jury, and sentenced to four years and six months imprisonment" (Beck and Beck, 1860: 248). The Becks found problems with this case as well. Here the woman's testimony was suspect because she had taken ether. They write:

The case excited much discussion in the medical journals throughout the country, and the opinion was quite general that the accused should not have been convicted upon this testimony ...Irrespective of the possibility of a deliberately false accusation, the well-ascertained occasional physiological effects of anaesthetic agents which have been mentioned, render, it can hardly be doubted, this case a very unsafe precedent ... (Beck and Beck, 1860: 248).

As well,

A certain amount of penetration with the male member is necessary to

constitute rape. Assuming the correctness of all the remainder of the statements, should the simple fact of pain having been experienced in the private parts be deemed adequate evidence that penetration to any extent with the male member have been effected, or even attempted? It would be easier to sustain a negative than an affirmative answer to this question (Beck and Beck, 1860: 248).

Were these women's claims true, or did the women make them up in order to seek revenge on the men they accused? I do not know. What is evident, though, is the amount of doubt put on these women's claims. Sarah Flemming was out late at night and the second woman was under the influence of ether. Sarah Flemming was doubted from the beginning despite being found tied up to a wall with rope and having lacerations on her body. The other woman was never examined and the ether, Beck tells us, possibly made her hallucinate. The result of Sarah Flemming's examination landed her in jail. The other woman found her accusers imprisoned. The conclusion the Becks reach is the need for forensic examinations in order that men not be falsely imprisoned.

In the case of Sarah Flemming, the physicians managed to cast doubt on her claims. No mention is ever made as to whether the same type of stone found in her vagina was around the area where the "alleged" assault took place. As well, Sarah Flemming was obviously not after the Callaghan brother's money, she had refused their offer previously. What could Sarah Flemming have gained by having these men jailed?

We learn that the marks on Sarah Flemming's mouth were self-inflicted, from sucking her gums. Was she sucking her gums in order to fain illness or could this possibly be a symptom of something else? Is it possible that Sarah Flemming put the stone inside

her vagina? Sarah Flemming knew that the doctors did not believe her. Is it possible she was trying to offer some sort of physical evidence in order that her claims be believed?

What is also interesting is the privileging of the visible in both cases. In Sarah Flemming's case, the Becks suggest that she went to great detail to provide visible, physical evidence. The evidence cast doubt on Sarah Flemming's claims; Beck and Beck maintain that she "simulate(d) various diseases" referring to the cuts in her mouth, venereal disease, and the stone found in her vagina. In the second case, the Becks scorn the conviction because of the lack of physical evidence. On this case, they wrote: "An examination by a physician was not made at any time. She observed nothing on her garments prior to the appearance of menses" (Beck and Beck, 1860: 248).

In Beck and Beck's commentary no doubt was cast on the innocence of the men involved. Throughout their enumeration of these two cases, the only doubt cast was on the claims of the women involved. In terms of Irigaray's theory, Sarah Flemming represents the prostitute and the second woman was respectively changing status from virgin to mother through marriage to a man in the community. Beck and Beck cast doubt on both women's claims. The virgin, though, was believed and the prostitute distrusted.

It is not the experience of the women involved that structure these medical practitioners' views on rape but rather a typology of woman. Or as Irigaray puts it, a notion of a universal or symbolic Woman prescribed by their status as virgin, mother or prostitute. Indeed, within the legal system and within forensic medicine, the treatment and diagnosis of women's claims of rape depended on their social status and this social status

depended on the men with whom they were or were not associated with. Medical practitioners diagnosis of women's claims of rape were heavily stacked in favour of protecting 'innocent' men. Women were not suppose to 'cry rape'. To do so in itself was a devious act, creating a cloud of suspicion and doubt against the woman involved.

Conclusion

The work in this chapter only begins to uncover the influence that the medico-legal profession has had in shaping social and political understandings of rape. The historical involvement of physicians in rape cases provides a rich source of material to situate the ways in which women's bodies, and in turn women, have been posited as objects of examination in order to determine differences between illegal heterosexual rape and legal heterosexual sex. These histories also demonstrates how the question of what constitutes illegal heterosexual rape has been framed in relation to women as the objects, and not the subjects, of examination.

The way in which markings on women's bodies, such as the hymen, were read by medico-legal professionals suggests that the politics of understanding rape had more to do with men's desires than women's sexual agency. That is to say, the way in which women were sexually desirable and valued as commodities by men organized the social relations regarding which women could be raped. For example, despite the uncertainty of the hymen as a marker of virginity, the hymen as a signifier of virginity was enforced by medical practitioners. Rape was (and still is, I would argue) constituted by the refusal of

women as persons, the insistence on turning women into objects-for-men.

In the next chapter, through an investigation of the operations of power in the contemporary sexual assault evidence examination, I discuss the social and political distinctions made between illegal heterosexual rape and legal heterosexual sex.

Chapter Four

Forensic Science's Model of Sexual Assault: Making a Case

(W)hat is perceived and conceived as violence varies according to expectations and to one's vital interests. When my peripheral interests are at stake, anything in excess of moderate force from others, whether mental or physical, will be perceived of as violent, while I am inclined to forget that other parties to the dispute may find their primary interests challenged and thus have a different view of what is and is not violent (Finn, 1996: 14).

Introduction

In a publication put out by the Department of Justice Canada (1988) entitled, ... *after sexual assault ... Your guide to the criminal justice system*, it is possible to determine how the justice system would like a woman to act after she has been sexually assaulted. (The ironic element about the book is that most women likely will not read the book immediately following a sexual assault.) In the first chapter of the book, “How can I Get Help Right Away?” we read in the initial few paragraphs:

Your first thought may be to wash and change your clothes, to get clean. If you do wash or bathe or even comb your hair, you may destroy evidence of the assault. To help the police, it is best to get help without cleaning up (Department of Justice, 1988: 9).

The chapter continues: “You will have to decide what to do. Here are some of the ways you can get help if you have been sexually assaulted” (9). The three ways highlighted that a woman can get help include calling the police, going to the hospital and calling a sexual assault centre. The steps outlined imply three critical features of the way sexual assault is managed. First, there is an acknowledgment that the woman is the one who chooses

whether or not to inform those involved in the justice system of the sexual assault. Second, these services are promoted as assistance, or help, for the woman. Third, by providing forensic evidence of the experience she judges as sexual assault, the victim is helping the police. The book suggests that there is a mutual relationship between the victim and the justice system.

In this chapter, I explore how power operates in the sexual assault evidence examination in order to shed light on what objectives can be served by the implementation and standardization of forensic evidence examinations of rape victims. I am using Foucault's sense of power, where power refers to actions upon actions. Foucault writes:

Power is exercised only over free subjects, and only insofar as they are free. By this we mean individual or collective subjects who are faced with a field of possibilities in which several ways of behaving, several reactions and diverse comportments may be realized (Foucault, 1983: 221).

The gathering of forensic evidence is promoted as serving the needs of victims. The woman who undergoes forensic evidence examinations chooses to have the examination when there are other possibilities open to her. It is the notion of choice that demands attention because, as demonstrated in the previous chapter, dominant legal and medical definitions and practices have not historically been about how women experience sexuality, but rather they have been about regulating women's sexuality. In legal and medical terms, rape and sex have historically been understood as something men do to women, hence, women's sexual and bodily agency have been understood in terms of men's desires. It was not in the interest of women that forensic rape examinations materialized.

This practice arose so that innocent men would not be punished or branded as a rapist.

Present-day techniques associated with the examination of rape victims are more refined and require more precise detail regarding a woman's experience of rape. The sexual assault evidence examination has undergone a transformation. From a legal standpoint, the examination appears neutral, favouring neither the accuser nor the accused. Perhaps given that hospital sexual assault units are not solely concerned with extracting evidence from women's bodies, but also offer crisis counselling and general medical attention to victims of sexual assault, some may argue that the pendulum has swung the other way, and that the odds are now stacked against the accused.

When the examination is presented as an option to a sexual assault victim it is meant to appear as a logical and rational choice. If you want someone punished with a crime you need evidence of that crime. I would venture that most women who have been sexually assaulted only find out about the forensic evidence examination after they have been sexually assaulted and, then, only if they seek out some form of institutionalized help. The decision to undergo the examination is made quickly. The sexual assault treatment unit provides a specific backdrop that frames the woman's choices.

In this chapter, by drawing an analogy between Foucault's analyses of the confession and the examination and relating it to the sexual assault evidence kit, I explore the operations of power in relation to these procedures. I argue that the examination serves to regulate how sexual assault is defined. In so doing, I discuss the boundaries between illegal heterosexual rape and legal heterosexual sex that are implicit in the model of sexual

assault upon which the kit is based. I conclude that despite changes in the administration of forensic evidence examinations since the 1800s, present-day techniques associated with the forensic sexual assault evidence examination continues to place women's bodies as objects of examination. In so doing, women's sexual agency cannot be taken into account because the woman as subject of the experience of sexual assault is replaced by the body as object of sexual encounter, a practice that continues in the historical trend of placing woman as the object, and not the subject, of sexual encounter.

The forensic evidence examination as a regulating practice

The way in which power circulates in the sexual assault evidence examination is central to the possibility of experiences being legally defined as rape. The sexual assault evidence examination is promoted as a liberating practice for the woman who has been sexually assaulted. The examination can play an essential role in bringing the perpetrator to justice and can also attend to the woman's physical well-being. However, the sexual assault evidence examination also constrains meanings and understandings of sexual assault. Meanings of sexual assault are constrained through the manner of inquiry which frames the question of what constitutes sexual assault. My argument is, however, that the particular manner in which the question is framed cannot take into account women's perception of sexual assault.

Since the 1970s, feminists have been actively involved in theorizing and researching social and legal understandings of rape. Power is a central term in most of this work and a

great deal of energy regarding how power should be conceptualized has taken place. My aim in this thesis is not to rehash feminist debates over whether or not rape is about sex or violence. It is helpful, nevertheless, to highlight briefly the political aims that underlie the debate.

The feminist debate regarding rape, sex and violence

Since the 1970s, some feminists working in the area of rape have focussed on refuting theories in which rapists were described as abnormal men and where women were said to provoke men into raping them. This body of work was intent on showing that rape was not about sex but rather about violence. Most notable with regard to its influence on Canadian law is the work of Clark and Lewis (1977), which was instrumental in shaping the new sexual assault laws that came into force in 1983. Their aim was to demonstrate that rape is a violent act. Clark and Lewis write:

For women, the presence of physical coercion defines the nature of the act. They experience rape as an *assault*, as an unprovoked attack on their physical person, and as a transgression of their assumed right to the exclusive ownership and control of their own bodies (1977: 166).

They continue:

It is thus our belief that rape must be removed from the category of sexual offences and reclassified as an assault. Rape is merely one form of unprovoked attack on the physical person, whether it is perpetrated by a male or a female, on a male or a female (1977, 168).

Theories such as Clark and Lewis' continue to place women's bodies as object and reinforce the idea that rape is a physically violent act. Indeed, their focus is on physical

coercion. This cannot take into account the way in which being a sexed body is lived out. For example, if a woman were to harass a man by rubbing his breasts it likely would not have the same meaning as if man were to rub a woman's breasts. The element of physical coercion is not necessary in either case. Such theories cannot take into account the specific way in which power operates between men and women.

The work of Catherine MacKinnon, on the other hand, epitomizes the argument that rape is about sex. MacKinnon argues that "the social relation between the sexes is organized so that men may dominate and women must submit and this relation is sexual - in fact, is sex" (1987: 3). MacKinnon continues and argues that: "Sexual violence can no longer be categorized away as violence and not sex" (1987, 6). MacKinnon aims to open up the construction of heterosexuality for examination and, in so doing, break down the binary opposition between rape and sex.

As Bell (1991) rightly points out, within this debate: "There are ... several different configurations between the terms sex, power and violence" (98). The feminist work in the 1970s was strategic in that it aimed to combat previous assumptions and "to theorise rape as a political act" (Bell, 1991: 90). A position, however, that focuses on rape as a violent act negates the contingent ways that rape and sex are lived out; that is, the specific ways in which power operates between women and men. As MacKinnon asks, "If you feel that you are going to be raped when you say no, how do you know that you really want sex when you say yes?" (1987: 83).

A discussion of the rape evidence kit demonstrates why it is critical not to negate the

sex in rape if our goal to understand rape as an experience where women have agency and, in turn, to understand how women's sexual agency is contingent upon the ways in which power circulates in heterosexual relations.¹

Power and the sexual assault evidence examination

Foucault's work on the confession and examination is helpful for understanding how the sexual assault evidence kit, when implemented, is an exercise of power. Foucault contends that in the western world the confession and examination are combined in such disciplines as psychiatry that moves one to speak in order to determine the truth of lived experience. The speech is codified in clinical terms and becomes constituted in scientific discourse by combining "the personal history with the deployment of a set of decipherable signs and symptoms; the interrogation, the exacting questionnaire" (1990: 65). As demonstrated in Chapter Two, all of these elements contribute to the method of inquiry in the sexual assault evidence examination.

Foucault maintains that:

The success of disciplinary power derives no doubt from the use of simple instruments; hierchical observations, normalizing judgement and their combination in a procedure that is specific to it, the examination (1979: 170).

The sexual assault evidence examination is a perfect vehicle for the exercise of disciplinary power. As stated previously, it is similar to a gynaecological examination.

1. Given the scope of the present work, an overview of this literature is not warranted. For an analysis of this debate, and the different usages of the terms rape, sex and power, Bell (1991) should be consulted.

The instruments used to extract evidence are simple and they are used to perform simple medical tests: to scrape, collect hair and blood samples. The evidence collected through the examination is then used to classify the woman's experience in legal terms. Her responses to the many questions open up her experience to a normalizing judgement. The examining nurse records the information so that others can judge the woman's experience. The method of judgement is predetermined by the boundaries between legal heterosexual sex and illegal heterosexual rape which have already been established (this will be more fully explored later on). The woman must allow her experience of sexual assault to be inserted into two separate yet related systems of understanding sexual assault, the medical system and the legal system.

The woman is inserted into these systems by turning her experience into a case. Part of the way the woman is turned into a case is through the method of interpretation that frames the sexual assault evidence examination. This is akin to the method Foucault describes as embedded in the confession. In the confession, truth is determined not by the one who speaks but, rather, by the one who listens. It is the one who listens who assimilates, records and verifies the truth of what is told to her or him. Truth, then, is determined by the one who listens.

The woman, in resisting, initially exercises power by speaking out about her experience. However, the determination of the truth of her experience is directed by the method of examination employed through the sexual assault evidence kit. While her experience appears to guide the examination, in that it directs the examiner where to

search on her body, the truth of her statements is measured by what is constituted as evidence of the act. It is not, then, if what the woman is saying is true; that is that if she believes that she was raped. Rather, the truth of her experience is judged by how well it measures up to what is constituted as evidence of sexual assault. It is not the woman who decides whether the act was sexual assault but others (judges, lawyers and juries).

The examination incites women to speak about sexual assault in explicit details. One of the observations I made while working at the rape crisis centre is that it is not always easy for women to speak of their experiences as rape. There are two reasons for this difficulty. First, women do not always want to name an experience as rape or sexual assault, especially when it happens with someone they trust. Life, for some women, would be much easier if they did not name the experience as rape. Second, the process of naming the experience is difficult for some women because it mirrors everyday life. Not all the details of the experience are significantly different from everyday life. On the confession, Foucault writes: "one goes about telling with the greatest precision, whatever is most difficult to tell" (1990: 59).

What happens when a woman begins to reconstruct her experience in bits and pieces and then, it is put back together again and packaged as evidence? One of the ways the examination manages to regulate sexual practices is by turning experience into a case. Minute detail is demanded so that the experience can be measured. When I worked on the rape crisis line, I observed that many women do not recount all the minute details of the rape, where they were touched and what was said. Nevertheless, the kit demands that they

speak of their experience in detail.

In the majority of sexual assault cases, women know their assailants. When they begin to describe their experience it frequently begins in familiar territories: their homes, their schools, their workplaces - spaces that offer some degree of comfort. A woman may begin her story: "We returned to my home after seeing a movie"; "We finished working on a big project and were having a drink in my office ..."; "I was in my professor's office discussing my research paper ...". Conversely, her story may begin, "It was around ten o'clock, I was returning home from school ...". These scenarios sound familiar. A woman will often describe her story of sexual assault beginning with ordinary, daily activities. Although the day a woman is sexually assaulted may not end up being an "everyday" kind of day, chances are that it started out that way. When a woman is sexually assaulted it is not always in a horrific setting with horrific activities.

All the details do not necessarily include actions that amount to phrases such as "he pushed me down on the floor," "he ripped my pants off," "I kicked him in the balls," or the like. Chances are the conversation and actions are more everyday, "We were sitting on the couch and he put his hand on my leg ...", "He put his hand on my shoulder ...". Or conversely, "I reached over to kiss him ...", "We were skinny-dipping in the lake ...". When women describe such details, they talk about them as everyday activities. But sexual assault is not expected to be an everyday activity for women and when women describe sexual assault it should not be in everyday terms if it is to be listened to as sexual assault. How, then, are these factors heard and recorded in the examination? Does the one listening

hear these details like everyday details, part of a day like any other day? When the details are recorded and read by others, how are they read?

What also needs to be taken into account is that if a woman decides to name her experience as rape it can alter her life considerably. If she knows her assailant, as most women do, it means she may likely have to face him with that knowledge. This does not necessarily imply a confrontation; it may simply be sitting in a classroom, a boardroom or her home. Seeing him once, and having named the experience, may continue to regulate how she behaves, where she goes and how she acts.

Secondly, if the woman decides to report the sexual assault to the police, she may have to face her assailant and his acquaintances on a day-to-day basis when they have knowledge of her accusations. As well, she will have to deal with the Crown Attorney and appear in court if he is charged. The court process can take a year or more to reach a resolution, a judgment of the events. This process continues to shape and regulate a woman's activities afterwards as well.

“Confessing” for the rape victim, leads the process of examination and directs the examiner where to search on her body for the traces of the acts she has described. The proper traces are required to validate her experience. The information she provides allows her experience to be categorized and classified, although not necessarily in her own terms. The boundaries of defining her experience are limited by the method of examination.

The standardization of the evidence suggests that there is only one interpretation for all involved. What this negates is that people come to their experiences differently. We do

not all consider the same sort of activities as constituting sexual assault. The point of the new sexual assault laws is that sexual assault is constituted by non-consenting sexual activity. For the concept of non-consenting sexual assault to be effective it needs to be able to take into consideration women's perceptions of their experience not simply the details of the sexual assault. What precisely is being measured and judged as constituting illegal heterosexual rape within the confines of the sexual assault evidence examination, if it is not, as I argue, women's perceptions of their experience?

Forensic sciences's model of sexual assault

As previously stated, legal definitions of sexual assault are vague. The way in which evidence constitutes sexual assault reveals, in part, how this crime is perceived within the criminal justice system. The signs that constitute forensic evidence of sexual assault are modeled on a prototype of a raped woman's body. This model is based on assumptions of how women and men interact during a sexual assault. Like an archaeologist, the examiner searches the woman's body for decipherable and designated signs of the act of sexual assault. The traces, or absence thereof, become the signifiers for the truth of the act. For the dispute is not necessarily a judgement of whether the act took place (although it can be) but whether that act was legal or illegal. The evidence kit can be used to classify the act as non-existent, as sexual, as an assault, or as one of various forms of sexual assault. The practices that make up the evidence examination are premised on a medical system of classification that is tied to classification in the legal system. The main concern of the

legal professionals who rely on the kit is not so much whether the woman is telling the truth but, rather how well what she says can be corroborated by traces of the act on her body, and how easily these traces can be mapped onto the designated signs of sexual assault in the kit. Following Foucault, this is the manner in which power is exercised through the implementation of the kit and allows the kit to play a regulatory function. The examination regulates the difference between illegal heterosexual rape and legal heterosexual sex. However, as I have been arguing, the manner in which the kit regulates sexual assault negates women's perceptions of their experience. The kit, then, also regulates women's sexual agency.

During the sexual assault evidence examination, the examiner is directed to focus on three sites: the mouth, the anus, and the genitalia. While other areas of the woman's body are surveyed, the tools for evidence collection have been designed specifically to extract evidence from these three sites on women's bodies. Hence, the model of sexual assault upon which the kit is based presumes that a rapist will have the most contact with a woman's mouth, anus and genitalia.

What do rapists do to or with these areas of the body? The kit searches for signs of saliva and semen in a woman's mouth. It is believed, then, that perhaps a man will lick or put his tongue in or near a woman's mouth. He may also insert his penis in the woman's mouth. It is also thought likely that seminal and saliva like deposits may be found in a woman's pubic hair. This would mean, then, that a man's penis may have been near a woman's genital area and that he may have ejaculated in this vicinity and perhaps his

mouth may have come into contact with the woman's genitalia. But these types of activities are not what constitutes the behaviour in question as assaultive but rather what makes it sexual. Activities in which a man's saliva or semen come into contact with a woman's body are those that are designated as sexual by the kit. By itself, the sexual assault evidence examination cannot determine whether these activities were forms of legal heterosexual sex or illegal heterosexual rape. All the kit can show, following its own definition of what is sexual, is whether sexual contact occurred. Thus, it must be other evidence that designates the behaviour as assaultive. The examination would be pointless if it were not able to offer some distinction between legal heterosexual behaviour and illegal heterosexual rape.

What are the distinctions, then, between legal heterosexual sex and illegal heterosexual rape? From the model of sex underlying the sexual assault evidence kit we learn that rape leave marks of bruising, cuts and scrapes. In this prototype of the raped female body, it is assumed that women react to illegal heterosexual rape by biting, kicking, and punching. Conversely, it is assumed that a woman would never do anything during legal heterosexual sex that would allow her to collect traces of a man's skin or hair under her fingernails, nor would she make any movement that may mark his body in some way. From this model, it can be inferred that women are passive during legal heterosexual intercourse and are active during rape. Does it follow, then, that if a woman consents to sexual intercourse with a man and actively engages herself to the point of sustaining vulvar injuries that the activity was illegal heterosexual rape and not legally sanctioned

heterosexual sex?

This all appears rather silly for both the women and men engaged in consenting heterosexual sexual activity. Not all women are active during rape nor are all women passive during sex. Conversely, not all women are aggressive during sex nor passive during rape. As well, women may sometimes be passive during sex and other times be aggressive. Ideas about appropriate behaviour for women during sex and rape are, in part, derived from the notion that sex and rape are about what men do to women. In such a model women do not have agency. Sex is not something women do but rather, if they are agreeable, something they passively accept.

This contemporary model of heterosexual assault maintains its links with an historical understanding of sexual assault as a property crime in which property becomes damaged and rendered less valuable, less useful. We need to be able to make clear that sexual assault is different from a property crime. A sexual assault is not a tangible object that one can hold in one's hand. One cannot run after a sexual assault offender and say, "Ah-ha, that is my sexual assault you are holding there!". If a woman feels like something was taken from her when she was sexually assaulted, it is not something that she can be given back. In part, the fact that women speak of sexual assault as something that has been taken from them reflects the discourses upon which sexual assault has been built, that is, the conception of rape as a crime of property. Sexual assault is different from having one's property smashed, stolen or damaged. These are the differences that need to be articulated if rape is to be understood as it is experienced.

Illegal heterosexual rape is equated, through the sexual assault evidence kit, with only violent physical activities. Sexual assault laws are supposed to respond to situations in which a woman feels that she has not consented to sexual activities. What a woman considers rape is not necessarily equated purely with visible, physical violence.

Conclusion

In order to understand rape as a lived experience we need to understand that lived experiences are not discrete moments in time and, in turn, are informed by prior experiences as well as those to come. Our experiences are not separate from the world in which we are situated. Rape and sex are not separate experiences that can be measured and judged based on physical signs on bodies. As this analysis of the sexual assault evidence kit demonstrates, sex and rape do not necessarily have physical differences. All the kit can measure is whether or not a sexual activity was physical. Only certain means (physically violent) used to achieve coercive sexual contact are readable through the kit; unwanted sexual contact itself falls outside the scope of the sexual assault evidence kit.

The sexual assault evidence kit is one way of regulating how we speak about rape and how we speak of our bodies. After the sexual assault evidence examination has been completed, the kit regulates women's perceptions of rape by measuring our experience by physical signs on our bodies. The kit begins to speak for us but not necessarily as we speak. The kit turns the experience of rape into rape as a thing, a thing that is separate from us. It does this by taking what is constituted as evidence, sealing it and packaging it

in a little box. The woman who has been sexually assaulted becomes a witness to the crime committed against her. The woman is alienated from the experience; it is taken from her, packaged and handed over to the Crown Attorney for her or him to do with it as she or he sees fit. Rape, the thing, becomes external to the woman.

How does the kit turn rape into something external from the woman who was raped? By prodding and poking and drawing and penetrating her again. The woman initially speaks, but her speech and actions are objectified and rematerialized in the form of the sexual assault evidence kit. They are no longer of her, but they stand in for her. The kit, as an object, cannot speak, others (lawyers, crown attorneys, judges, juries) speak for and of it and proclaim its value. The kit stands as a tool for measurement, to extract from women's bodies evidence to determine the truth of their claims of sexual assault. When this deed is done the evidence is placed in relation to others (to the evidence from other women's bodies that have been examined and to the evidence that will come from the women who will be raped after her) to proclaim its value. And then, it is measured once again against the written law. The law appears to proclaim its value. The law, however, is another exchange; the value of the law is determined by others. The law, like any other commodity, cannot speak. The woman's experience of rape is obscured.

Dead men are speaking. Can dead men speak you ask? They speak louder and more clearly than the women who are raped. Dead men initiated the laws for the protection of their property, they set the foundation which produces the results of what it means to be a marked woman in the social order.

The written legal documents on rape that have been passed down from generation to generation have been modified over time. The crime of rape has changed to crimes of sexual assault. The more marked within the order of the visible, the more value her contained traces have in relation to the sexual assault evidence kit. It is only the visible that holds value, that can be measured; marked again and be recognized by legal standards.

Women's bodies do not speak, they are to bear up their truths to the medical/juridical gaze through the sexual assault evidence kit. Women, are now deemed persons within the law. Therefore, women themselves cannot be deemed property, or commodities within legal discourse. Something else stands in for us as commodities. Rape takes on a more abstract form with the change in law from its concrete form when women were outrightly regarded as property of their husbands and fathers.

Rape becomes an object and takes on the material form of the sexual assault evidence kit. How is it that the sexual assault evidence kit now acts as the commodity? The coin, to use Marx's terms, has changed form but the function (control of woman, of sexuality, of the relations between the two sexes) has not.

The forensic evidence of the sexual assault kit has become detached from the experience - from the woman, taken from the woman to stand in for her, to measure her against all others, and measures her and all others against a prototype. She is the witness to the social devaluation of her marked body, her body used up. The more her body was used up, the more worth the sexual assault evidence kit stamps on her, her value used. It is not

her, but rather what has been taken, contained and embodied as object to be held up as spectacle, like the chalice that contains no body but speaks and proclaims the body.

Rape is now produced through the sexual assault evidence kit and becomes the property of the state. The act of rape is measured against the forensic evidence, or the sexual assault evidence kit. Every rape is allotted value based on how well it measures up against the kit. Rape becomes homogenized, alienated from the woman when measured against this form of legal standards. Only the traces of the act are given value, the female subject-body is erased from the crime.

How women perceive sexual interaction (be it legal or illegal) varies amongst women and is contingent on their own prior experiences and positioning in the world. Such a conceptualization poses problems for addressing rape within the present legal system, more precisely the codification of rape. The disjuncture between objective definition and subjective experiences can not be accounted for within the justice system without constraining meanings of sexual assault. If we want to understand rape as if women mattered, we need to continue working on uprooting the firm hold that law has on enforcing definitions and understandings of women's experiences of rape. The implications of attempting to account for women within the existing framework of medico-legal institutions continues to position women as commodities. While it is important to continue working for the protection of women from within these institutions, it is equally important to explore alternatives in order to attempt to break with the historical trend of positioning women as commodities and to avoid reifying institutional

definitions of rape.

Chapter Five

More than a Body of Evidence

Concluding thoughts

A relationship of confrontation reaches its term, its final moment (and the victory of one of the two adversaries) when stable mechanisms replace the freeplay of antagonistic reactions (Foucault, 1983: 225).

In this thesis, I have not been concerned with judging the validity of experiences of rape (the truth of it), but rather how the truth of the experience of rape is determined by the sexual assault evidence kit. That is, the ways women have access to make the truth of their experience valid within the legal system. In turn, I have been suggesting that how we understand rape is in relation to how we understand sex.

The model of sexual assault that the sexual assault evidence kit is based upon has attempted to distinguish legal heterosexual sex from illegal heterosexual rape according to visible, physical signs on women's bodies. In part, this is a reflection of the legal need to reinforce a difference between rape and sex. In doing so, the sex in rape remains hidden.

Politically, for women, it is neither a strategic move to take the sex out of rape or conversely, the rape out of sex. Both operate under discursive constructs of sex and sexuality. As Foucault has written:

Power is essentially what dictates its law to sex. Which means first of all that sex is placed by power in a binary system: licit and illicit, permitted and forbidden. Secondly, power prescribes an "order" for sex that operates at the same time as a form of intelligibility: sex is to be deciphered on the basis of its relation to the law. And finally, power acts by laying down the rule: power's hold on sex is maintained through language, or rather through the act of discourses that creates, from the very fact that is articulated, a rule of law

(Foucault, 1990: 83).

The more heterosexual sex deviates from the norm of women in a submissive position to a man, the more devious the sex becomes. It is only sex that leaves physical marks such as cuts and bruised on a woman's body that may be punished. This mirrors conceptions of women as commodity where the commodity is damaged when it is dented or bruised. What is lost in this model of sexual assault are women's perceptions of sex and sexuality, women's sexual agency.

What will we learn, if we listen to women's experience of rape or of sex and we do not close up the categorical distinctions? We must listen to the uncertainty and the confusion and learn that rape and sex are not the distinct acts that they are purported to be but that they are lived out in ambiguity. In turn, if we question the stability of rape as an object of examination, which is reinforced through practices such as the sexual assault evidence kit, we can begin to question the stability of legal heterosexual sex. Perhaps that is the problem and the fear; that the normality of what is known as legal heterosexual sexual relations will be opened up for questioning.

The sexual assault evidence examination helps to reinforce a silence by keeping rape and sex in a binary opposition, by making a sharp distinction between the two. The distinction reinforces a taboo of acknowledging the non-differentiation between illegal heterosexual rape and legal heterosexual sex. By wanting to keep sex good and rape bad, we are creating a censorship regarding the question of what remains the same about rape and sex. How can heterosexual sex be practiced as good if it is like rape that is bad?

Understanding rape means understanding that women have sexual agency and are not merely the receptacles of the desires of men. When we are talking about rape we are talking about what a specific sexual experience means to the people involved.

The sexual assault evidence examination regulates the interpretations of women's experiences of rape. The facts of the matter are derived from a specific medical method of examining raped women's bodies that does not recognize women's agency beyond her struggle to resist. It is based on a model which, in its inception, concerned itself with protecting those men "accused though innocent." The historical prototype of a raped woman's body was based on an ideal virginal body. These assumptions left many women and, correspondingly, many ways of understandings of rape, at the wayside. Present-day sexual evidence examinations have not strayed far from their historical predecessors. Despite changes in the legal definitions of rape, the model of sexual assault employed in forensic evidence examinations has remained virtually unchanged. The changes that have occurred have rested solely at an administrative and technical level.

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Appendix A

INSTRUCTIONS FOR EVIDENCE COLLECTION

DOCUMENT EVIDENCE COLLECTION ON ATTACHED FORM (IV). DETACH AND DISCARD INSTRUCTIONS

NOTE: EVIDENCE COLLECTED AND DOCUMENTED IN THIS KIT SHOULD BE DIRECTED BY THE HISTORY OF THE ASSAULT. UPON CONSULTATION WITH THE INVESTIGATING OFFICER WHEN AVAILABLE, ADDITIONAL SPECIMENS MAY BE REQUESTED (eg. PUBIC HAIRS, ETC.). PATIENT SHOULD POSTPONE VOIDING, IF POSSIBLE, UNTIL PROCEDURES 3-A TO 3-H HAVE BEEN COMPLETED TO AVOID LOSS OF EVIDENTIAL MATERIAL. IF NOT POSSIBLE, AVOID WIPING OR SAVE TISSUE IN CONTAINER 3-A (MUST BE AIR DRIED).

BAG #1 - CLOTHING (Collected by Nurse at discretion of Physician)

- 1-A Have the patient stand on the two layers of paper provided (1-A) and remove each item of clothing (including shoes) separately. Place articles of clothing in separate bags (1B-1J) as removed. Bag items over paper to prevent loss of trace material. Label each bag. Carefully fold the TOP SHEET of paper to enclose any debris. Label. Discard bottom sheet. Place packaged clothing and paper in large green plastic bag and give to investigating officer.

BAG #2 - BODY EVIDENCE (Done by Nurse at discretion of Physician)

- 2-A1 Take **ORAL SWAB** (thoroughly rubbing along gum and teeth margin) using swab 2-A1. Place swab in tube 2-A1.
FOR HOSPITAL USE ONLY. SWAB IS NOT INCLUDED IN THE KIT:
Take pharyngeal swab for gonorrhoea if oral penetration has occurred.
- 2-A2 Have the patient rinse thoroughly with 10 mL distilled water and preserve **ORAL RINSE** in container 2-A2.
- 2-B To collect a **SALIVA SAMPLE**, wait at least 5 minutes after 2-A2 and have patient spit on to the middle of the saliva collection card. Allow to air dry. Place in envelope 2-B. Ensure sample is completely dry before placing in envelope.
- 2-C Place any **FOREIGN MATERIAL** (dirt, fibres, etc.) from body on separate sheets of paper provided in envelope 2-C. Label site, fold and replace in envelope. (Include fingernail clippings, if appropriate.)
- 2-D Remove swab from tube 2-D. Moisten in distilled water. Using swab, remove any **SEMINAL/SALIVA-LIKE STAINS** on the skin including bite marks. Use separate sterile swab and tube for each site and label.
- 2-E Unfold paper 2-E containing comb. Have patient shed **HAIRS** on paper 2-E by massaging scalp and combing hair. Attempt to collect 50 hairs. Have patient pluck a total of 10 hairs from different areas of the scalp in order to include the hair root. Fold paper 2-E containing hairs and comb. Fasten with scotch tape and label.
FOR BLOOD:
A total of 5 tubes of blood may be required. In children defer all blood work until it is required for forensic purposes.
- 2-F (**PURPLE TOP**) Take 1 tube (5 mL in children) of **BLOOD** for grouping.
- 2-G (**GREEN TOP**) Take 1 tube (5 mL in children) of **BLOOD** for grouping.
- 2-H (**GREY TOP**) Take 1 tube (5 mL in children) of **BLOOD** for alcohol and drug analysis.
FOR HOSPITAL USE ONLY. TUBES ARE NOT INCLUDED IN THE KIT:
Collect 5 mL of **BLOOD** for V.D.R.L. and, if relevant, 5 mL of **BLOOD** for serum HCG to diagnose pregnancy. Other tests may be medically indicated. Refer to medical guidelines regarding HIV and hepatitis protocol.

PROCEED WITH GENERAL EXAMINATION.

BAG #3 - GENITAL/ANAL EVIDENCE

- Guidelines:**
- a) Respect need for privacy and appropriate draping.
 - b) Vaginal Specular: (For procedures 3D-3G) warm speculum under tap water - DO NOT USE lubricants or lubricated specula.
 - c) Prepubertal: If no evidence of genital bleeding or trauma to external genitalia, do not do internal, manual or speculum examination but proceed with vaginal swabs for 3-E and 3-G.
- 3-A Cut out any apparent **SEMINAL/SALIVA-LIKE DEPOSITS** found in the pubic hair. Place in paper, fold carefully and replace in envelope 3-A. Use a swab moistened with distilled water to collect any similar deposits on external genitalia and put in tube 3-A.
- 3-B Comb the **PUBIC HAIR** for loose hair, fibres, etc., with comb on paper provided in envelope 3-B. Place combings and comb on paper, fold to enclose contents and replace in envelope 3-B.
- 3-C Place any **FOREIGN MATERIAL** (hair, fibres, etc) found in vagina on paper provided, fold and replace in envelope 3-C.
- 3-D Take 2 swabs of the **VAGINAL FORNIX** (not cervix). Swab thoroughly and place swabs in tube 3-D. (In prepubertal children use swabs moistened in distilled water and swab the introitus only). Proceed to 3-E before placing swabs in tube 3-D.
FOR HOSPITAL USE ONLY. DO NOT SUBMIT WITH KIT. SWABS ARE NOT INCLUDED IN THE KIT:
IN ADULT FEMALES:
Do cervical swab and smear for gonorrhoea and chlamydia.
IN PREPUBERTAL FEMALES:
Moisten swabs in appropriate transport medium and swab introitus for gonorrhoea, chlamydia and trichomonas.
IN MALES:
Urethral swabs for gonorrhoea and chlamydia may be indicated.
- 3-E **MOTILITY EXAMINATION** - Place 1-2 drops of normal saline on slide. Roll one swab of 3-D onto slide 3-E. Cover with a cover slip. After completion of pelvic examination, examine for presence of motile sperm (using 40X objective). Allow slide to air dry and place in holder 3-E.
- 3-F Use syringe and tubing provided to introduce 5 mL (2 mL for children) of distilled water into the posterior **VAGINAL FORNIX**. Aspirate and place in container 3-F. Discard syringe and tubing.
- 3-G To take **ANAL SWAB**, first moisten swab with distilled water. Place swab in tube 3-G.
- 3-H After cleansing anal area with distilled water, take **RECTAL SWAB**. Place swab in tube 3-H.
FOR HOSPITAL USE ONLY. SWAB IS NOT INCLUDED IN THE KIT:
Do rectal swab for gonorrhoea and chlamydia if rectal penetration has occurred.
- 3-I Collect **URINE** for drug and alcohol analysis and place approximately 10 mL **URINE** in container 3-I.
FOR HOSPITAL USE ONLY. CONTAINER NOT INCLUDED IN THE KIT:
Send urine sample for baseline pregnancy test if indicated.

I. CONSENT FORM

1. Consent to medical examination for the effects of a sexual assault.
2. Consent to medico-legal examination of the sexual assault.
3. Consent to disclosure of the results of the medico-legal examination.

TO: _____
(Name of Physician)

AND TO: _____
(Name of Hospital)

and all physicians and other persons associated with said Hospital.

I, _____ hereby authorize you to:
(Name of Person giving consent)

- (1) Examine and treat _____ for the effects of sexual assault.
- (2) Collect and document medico-legal evidence for the purpose of assisting the police in apprehending and/or prosecuting the person(s) who committed the assault. This examination will include a physical examination which may involve an examination of the mouth, vagina and anus and rectum; in addition, it may include the removal and isolation of articles of clothing, head hair, saliva, pubic hair, and samples taken from the vagina, anus and rectum. This may also include the collection of blood and urine specimens for analysis to determine the presence of alcohol and/or other drugs. Any relevant information obtained at a follow up visit (up to 72 hours) may also be included.
- (3) Inform the police that a sexual assault complaint has been made and provide them with any substances collected during the course of the medical examination, copies of the Sexual Assault History Form, the Forensic Evidence Form, the General Examination Form and any other information and observations that might assist them in apprehending and/or prosecuting the person(s) who committed the assault.

I understand that I am free to consent to all or any part of the above. I also understand that my refusal to consent to either or both of items (2) and (3) above will in no way result in denial of treatment for the effects of the assault.

I also understand that I am free to revoke all or any part of this consent at any time during the examination.

(Signature of Patient)

(Signature of Witness)

(Date)

(Signature of guardian or relative of patient where patient is under 16 years of age or is unable to consent by reason of mental or physical disability).

I. FORMULE DE CONSENTEMENT

1. Consent à un examen médical à la suite d'une agression sexuelle.
2. Consent à un examen médico-légal de l'agression sexuelle.
3. Consent à la divulgation des résultats de l'examen médico-légal.

A: _____
(nom du médecin)

et à: _____
(nom de l'hôpital)

et à tous les médecins et autres personnes attachées audit hôpital.

Je, soussigné(e), _____, vous
(nom de la personne donnant le consentement)
autorise par la présente à:

- (1) examiner et soigner _____ à la suite d'une agression sexuelle;
- (2) recueillir des preuves médico-légales et y apporter des pièces justificatives afin d'aider la police dans l'arrestation et/ou la poursuite de l'agresseur/des agresseurs. L'examen en question consistera en un examen physique pouvant comprendre un examen de la bouche, du vagin, de l'anus et du rectum ainsi que le prélèvement et l'isolement de vêtements, de cheveux, de salive, de poils pubiens, et d'échantillons prélevés sur le vagin, l'anus et le rectum. Il peut également inclure le recueil de prélèvements de sang et d'urine qui seront analysés en vue de déterminer la présence d'alcool et/ou d'autres drogues. Toute information pertinente obtenue lors d'une consultation subséquente (72 heures au plus) peut également être incluse;
- (3) informer la police qu'une plainte relative à une agression sexuelle a été déposée et lui fournir les substances recueillies au cours de l'examen médical, les doubles des formulaires de renseignements sur l'agression sexuelle, les preuves médico-légales, l'examen général ainsi que toute autre information ou observation susceptible de l'aider dans l'arrestation et/ou la poursuite de l'agresseur/des agresseurs.

Il est entendu que je suis libre de consentir en tout ou en partie aux points susmentionnés. Il est également entendu que mon refus de consentir à l'un ou l'autre, ou aux deux, des points (2) et (3) susmentionnés n'entraînera d'aucune façon la dénégation de soins nécessaires à la suite de l'agression.

Il est également entendu que j'ai le droit de révoquer ce consentement en tout ou en partie en tout temps durant l'examen.

(signature du (de la) patient(e))

(signature du témoin)

(date)

(Signature du (de la) tuteur (tutrice) ou d'un(e) parent(e) de la patiente si elle n'a pas 16 ans ou si elle est dans l'incapacité de donner son consentement en raison d'infirmité physique ou mentale).

II. MEDICAL HISTORY FORM
For Medical Use Only
(To be completed by physician)

Patient's Surname	Given Name	Admission Date	Tel. No.: H: _____ B: _____
Address (Number, Street, City, Province, Postal Code)			

Age	Birthdate	Sex M ☐ F ☐	Patient's OHIP No./ Prov. Health Insur. No.	Subscriber's Surname and Initial
Next of Kin/Guardian (Surname, Given Name)				Tel. No. H: _____ B: _____

Allergies	Current Medication
-----------	--------------------

Relevant Medical or Surgical History

If Patient is Female. Note Menstrual History:

MENARCHE	CYCLE	MENSES	LNMP	PMP	PARA	GRAVIDA
----------	-------	--------	------	-----	------	---------

Contraception: Current Method _____	Is Patient Pregnant? Y ☐ N ☐	Gestation (No. wks.) _____
--	---	----------------------------------

physician's signature	date
-----------------------	------

III. SEXUAL ASSAULT HISTORY FORM (To be completed by examining physician)

Kit No. _____

Page 1 of 2

PRESS HARD WHEN PRINTING

Patient's Surname		Given Name		Birthdate	Age	Sex ☐ M ☐ F
Date:	Admission Time: 1) E.R. 2) SACC 3) Physician Arrival					
Did police accompany patient to hospital? ☐ Yes ☐ No		Police Force	Officer's Name		Badge No.	Telephone No.
Location of Assault		Date of Assault	Time of Assault	Assailants (No. and Sex)		
Since Assault were clothes changed? ☐ Yes ☐ No				If yes, are they available? _____ were they washed? _____ were they repaired? _____		
Does the patient think any marks were left on the assailant, e.g. by biting, scratching, kicking, etc. (Describe)						
Describe pertinent data of assault (Injuries to the complainant and mechanism, weapons or objects used or threatened, verbal threats, areas touched, etc.)						
Female and Male During the assault was there penetration of victim's:						
	Attempted Yes No Don't Know N/A			Completed Yes No Don't Know		Ejaculation by Assailant Yes No Don't Know
VAGINA	☐	☐	☐	☐	☐	☐
ANUS	☐	☐	☐	☐	☐	☐
MOUTH	☐	☐	☐	☐	☐	☐
	Was Condom Used Yes No Don't Know			Was Lubricant Used Yes No Don't Know		
VAGINA	☐	☐	☐	☐	☐	
ANUS	☐	☐	☐	☐	☐	
MOUTH	☐	☐	☐	☐	☐

Ontario

III. SEXUAL ASSAULT HISTORY FORM (To be completed by examining physician)

Kit No. _____

Page 2 of 2

PRESS HARD WHEN PRINTING

Did assault include oral sex by assailant upon victim? ☐ Yes ☐ No ☐ Don't Know

Was last previous intercourse within 1 week prior to the assault? ☐ Yes ☐ No

(If relevant to the details of the assault, specify whether vaginal, oral or anal _____ ☐ N/A

If yes, — date and approximate time _____

— was contraceptive used ☐ Yes ☐ No If yes, specify _____
(condom, diaphragm, spermicide, etc.)

— between last intercourse and assault did patient:

douche	☐ Yes ☐ No ☐ N/A	defecate	☐ Yes ☐ No ☐ N/A
shower	☐ Yes ☐ No	void	☐ Yes ☐ No ☐ N/A
bathe	☐ Yes ☐ No		

Was patient menstruating at the time of the assault? ☐ Yes ☐ No

Was patient menstruating at the time of the examination? ☐ Yes ☐ No

Between the assault and the evidence collection did patient:

douche	☐ Yes ☐ No ☐ N/A	void	☐ Yes ☐ No
shower	☐ Yes ☐ No	use	☐ Yes ☐ No
bathe	☐ Yes ☐ No	spermicide	☐ Yes ☐ No
defecate	☐ Yes ☐ No ☐ N/A		

Specify site _____

Specify spermicide used _____

Approximate time administered _____

Was underwear collected in bag 1 worn after spermicide insertion?

☐ Yes ☐ No

Since the assault has there been any vaginal discharge/bleeding?

☐ Yes ☐ No Describe _____

Prior to the assault had there been any vaginal discharge/bleeding?

☐ Yes ☐ No Describe _____

	Name (Print)	Address	Telephone No.
Examining Physician	_____	_____	_____
Nurse	_____	_____	_____
Social/RCC Worker	_____	_____	_____
Consulting Physician	_____	_____	_____

(Signature of Examining Physician)

Date: _____ Time: _____

(Nurse's Signature)

Date: _____ Time: _____

IV. FORENSIC EVIDENCE FORM

PRESS HARD WHEN PRINTING

Bag No. 1 - Clothing (itemize)	Bag No. 2 - Body Evidence	Bag No. 3 - Genital and Anal
	None Found Done Not Done	None Found Done Not Done
1A - (Paper)		
1B	2A Oral Swab ☐ ☐	3A Seminal/Saliva deposits in pubic hair ☐ ☐ ☐
1C	2A2 Oral rinse ☐ ☐	3B Combing of pubic hair ☐ ☐
1D	2B Saliva sample ☐ ☐	3C Foreign Material ☐ ☐ ☐
1E	2C Foreign material on body ☐ ☐ ☐ Site _____ Site _____	3D Vaginal Swabs ☐ ☐
1F	Site _____ Site _____	3E Slide for motility check Time _____ ☐ ☐ motile ☐ non-motile ☐ no sperm found ☐
1G	2D Seminal stains on skin ☐ ☐ ☐ Site _____ Site _____	3F Vaginal Aspirate ☐ ☐
1H	Site _____ Site _____	
1I	2E Scalp hairs ☐ ☐	3G Anal Swab ☐ ☐
1J	2F Blood for grouping ☐ ☐	3H Rectal swab ☐ ☐
	2G Blood for grouping ☐ ☐	3I Urine sample Time _____ ☐ ☐
	2H Blood alcohol/drug(s) analysis ☐ ☐ Time _____	

Reason, if any of above not done

Name of Patient	Kit No.	Clothing and Specimens received from:
Hospital Name and Location	Date and Time of Examination	Date Time Place
Signature of Examining Physician	Received by: (Name of Police Officer) Rank	
Assisted by - (Signature and Title)	Name of Police Department	

-2-

Mark all injuries on the diagrams, indicating type of injury, size, shape and colour.

-3-

FOR MALE PATIENT

PENIS _____

SCROTUM _____

ANUS _____

RECTUM _____

FOR FEMALE PATIENT (Prepubertal — see page 4)

LABIA MAJORA AND MINORA _____

POSTERIOR FOURCHETTE AND INTROITUS _____

HYMEN _____

VAGINA AND CERVIX _____

UTERUS AND CERVIX _____

ANUS AND RECTUM _____

-4-

PREPUBERTAL FEMALE

CHILDREN

Stages of secondary sex characteristic development should be noted for all children/adolescents according to the tanner staging described below:

Tanner Staging: Girls: Breasts _____ Both sexes: _____
 Boys: Genitals _____

Girls: Breast development:

- Stage 1: Pre-adolescent: elevation of papilla only.
- Stage 2: Breast bud stage: elevation of breast and papilla as small mound. Enlargement of areola diameter.
- Stage 3: Further enlargement and elevation of breast and areola, with no separation of their contours.
- Stage 4: Projection of areola and papilla to form a secondary mound above the level of the breast.
- Stage 5: Mature stage: projection of papilla only, due to recession of the areola to the general contour of the breast.

Boys: Genital development:

- Stage 1: Pre-adolescent. Testes, scrotum and penis are of about the same size and proportion as in early childhood.
- Stage 2: Enlargement of scrotum and testes. Skin of scrotum reddens and changes in texture. Little or no enlargement of penis at this stage.
- Stage 3: Enlargement of penis, which occurs at first mainly in length. Further growth of testes and scrotum.
- Stage 4: Increased size of penis with growth in breadth and development of glands. Testes and scrotum larger; scrotal skin darkened.
- Stage 5: Genitalia adult in size and shape.

Both sexes: pubic hair:

- Stage 1: Pre-adolescent. The vellus over the pubes is not further developed than that over the abdominal wall (i.e. no pubic hair).
- Stage 2: Sparse growth of long, slightly pigmented downy hair, straight or slightly curved, chiefly at the base of the penis or around labia.
- Stage 3: Considerably darker, coarser and more curved. The hair spreads sparsely over the junction of the pubes.
- Stage 4: Hair now adult in type, but area covered is still considerably smaller than in the adult. No spread to the medial surface of thighs.
- Stage 5: Adult in quantity and type with distribution to the horizontal (or classically 'feminine') pattern. Spread to the medial surface of thighs but not up linea alba or elsewhere above the base of the inverse triangle (spread to the area above occurs late and is rated Stage 6).

V. GENERAL EXAMINATION FORM
(PHOTOCOPY AND PROVIDE 1 COPY TO INVESTIGATING OFFICER)

Kit Number: _____

Name: _____

PHYSICAL EXAMINATION — (Injuries should be documented on enclosed diagrams)

COMMENT ON EMOTIONAL STATUS — (use observable descriptive terms if possible)

Physician's Signature

Date

Time

VI. TREATMENT GUIDELINES FORM

Patient's Name _____

Urgent Medical Needs must be prioritized. Serious physical injuries are uncommon but consider examination and treatment under anaesthesia if serious genital injuries are suspected (eg. continuous vaginal bleeding from unknown source).

GUIDELINES

MANAGEMENT

Sexually Transmitted Diseases	<p>Consider prophylaxis for:</p> <ol style="list-style-type: none"> 1) gonorrhoea and chlamydia (see latest Health & Welfare recommendations re: type and amount of antibiotic). 2) Hepatitis B in high risk situations (eg. assailant is known to be in high risk group and vaginal or anal penetration has occurred). <p>Draw blood for hepatitis B serology. Hepatitis B Immune Globulin (HBIG) 0.06 ml/kg IM as soon as possible (can be given up to 72 hours post occurrence).</p> <p>Give HBIG 0.06 ml/kg IM in 4 weeks if serology is negative.</p> <ol style="list-style-type: none"> 3) HIV: Consider use of nonoxynol-9 (Delfen Foam) 1 applicator per vagina or per rectum as soon as possible post assault. Some sources suggest this may have some effect in prevention of HIV transmission. Currently no confirmatory data available (January, 1990). <p>HIV testing at time of assault is not recommended although hospital may wish to store blood sample as control for future testing.</p>
Pregnancy Prophylaxis	<p>Consider in post-menarchal females (also immediately pre-menarchal girls) regardless of time in menstrual cycle. Give within 72 hours of coitus involving penetration or near-penetration. Not to be given to pregnant women.</p> <p>"Morning after pill"</p> <p>OVRAL 2 tablets po stat and repeat in 12 hours with anti-emetic as indicated.</p>
Lacerations	Tetanus prophylaxis as indicated.
Other Injuries	Treat as medically indicated.
Reporting	It is mandatory for all hospital and medical staff to report all child sexual abuse immediately to a child protection agency. (Child and Family Services Act, 1984, s.68)
Psychosocial	<p>Follow up within 72 hours after initial assessment for psychological sequelae. Refer to appropriate consulting service (eg. social worker, rape crisis centre worker, psychologist, psychiatrist) for treatment.</p> <p>For children coordinate through local child protection agency.</p>
Follow Up	<p>Within 72 hours - document late developing bruises</p> <p>Two weeks - repeat gonorrhoea & chlamydia cultures (should be done at 1 week if antibiotic prophylaxis not given).</p> <p>As necessary: pregnancy and psychosocial sequelae.</p> <p>Six weeks - Consider HIV and VDRL testing and counsel appropriately. Patient should be reassured that risk is remote.</p> <p>Current recommendation on testing for seroconversion should be followed.</p>

Physician's Signature _____

Date _____

IMAGE EVALUATION TEST TARGET (QA-3)

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