



SAKI
SEXUAL ASSAULT
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In the Hot Seat

Direct Examination of SANE in Cold Case Sexual Assault Trial

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INNOVATIVE

Sustaining effective practices
and promoting systemic
change

INFORMED

Training, resources, and
assistance supported by
research and experience

PRACTICAL

Customized strategies that
are accessible, responsive,
and easy to apply

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Objectives

- Conduct an effective direct examination of a SANE bringing into focus patient care and professional work.
- Explain medical findings in the context of the patient's history of the assault and the SANE's examination.
- Present evidence of trauma to the jury from an earlier period of time.
- Meet challenges of cold case medical testimony.

Q: What is the role of the SANE?

A: “The practice of nursing globally when health and legal systems intersect”

INT’L ASSOC. OF FORENSIC NURSES,
FORENSIC NURSING: SCOPE AND
STANDARDS OF PRACTICE (2009)

Trial





Patient Care

SANE

**Voice of
Integrity and
Compassion in
the Courtroom**

Trauma-Informed Care

An approach to engaging people with histories of trauma that recognizes the presence of trauma symptoms and acknowledges the role that trauma has played in their lives.

National Center for Trauma Informed Care and Alternatives to Seclusion and Restraint (NCTIC), SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, www.samhsa.gov/nctic



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Managing Issues in Cold Cases

Medical Records

- Accessing medical records
- Storage/destruction of medical records
 - Longevity of medical records is increasing, especially with the electronic record
 - Check detectives' file for existing medical report

Evidence Not Originally Collected

- Patient presented for care but evidence wasn't collected due to shorter collection windows
- SANE can educate jury on changes in protocol
- Medical history and history of complaint still admissible

Evidence Not Sent to Laboratory

- Evidence obtained from patient and provided to law enforcement by SANE but not sent to crime laboratory
- Detective can explain circumstances / reasons
- Crime laboratory personnel can detail previously existing resources

Medical Provider Unavailable

- Consider calling SANE expert
- Review of medical record including medical history and history of complaint and examination
- Review reports in an attempt to ascertain clinical signs and symptoms that were documented

Testimony by Expert Witnesses

FRE 702

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

Bases of an Expert

FRE 703

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

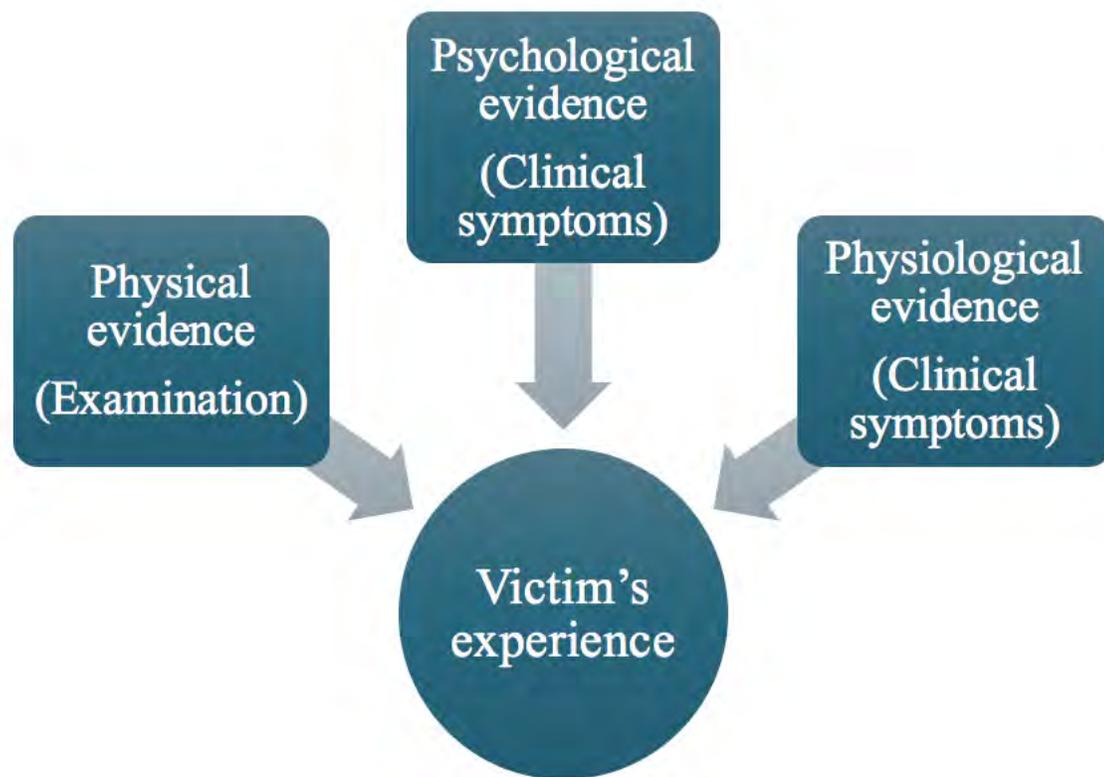


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Disclosure and History of Assault

Impact of Trauma

Presentation of Evidence



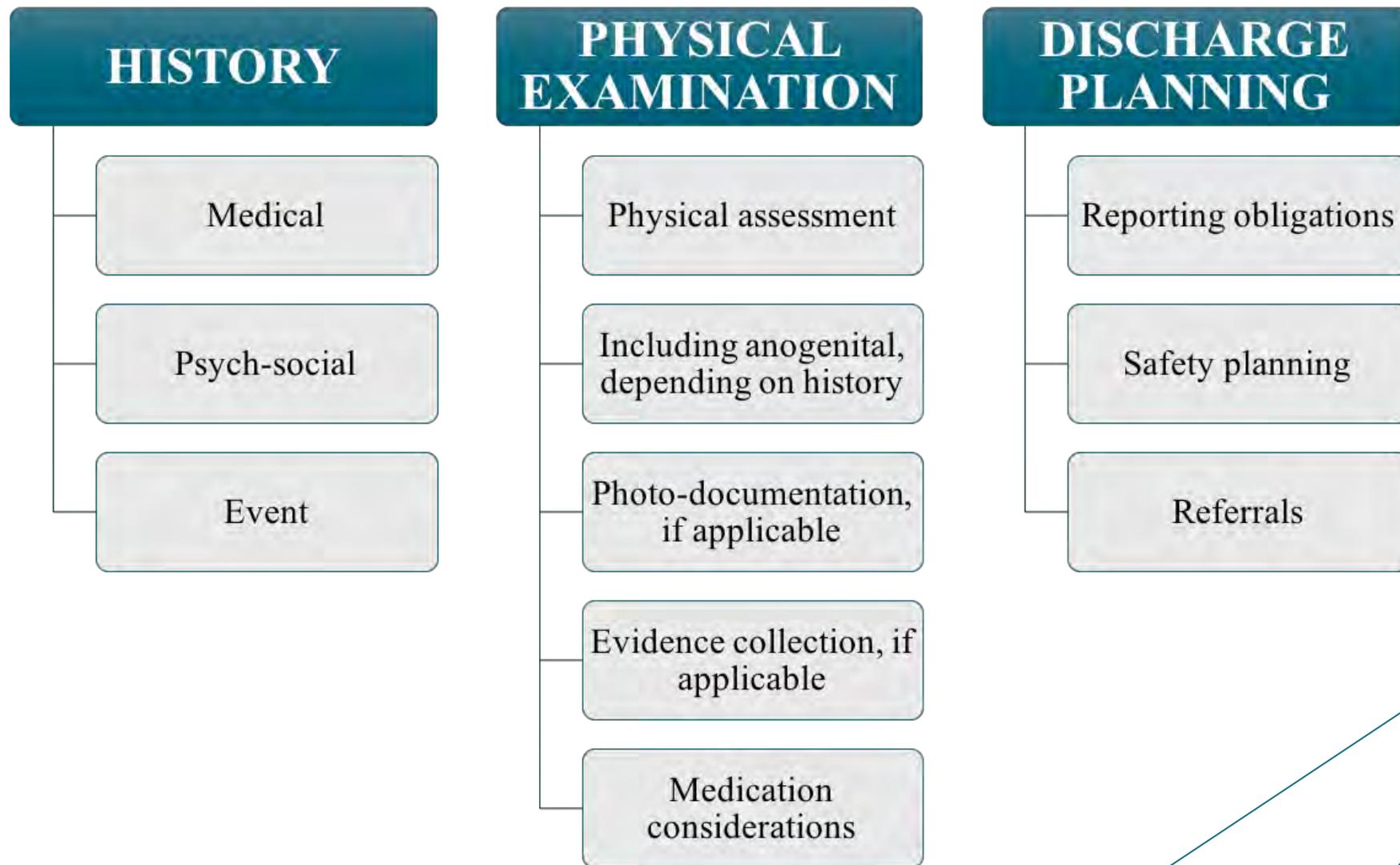
Clinical Symptoms / Evidence



Disclosure Over Time



The Medical-Forensic Exam



Medical Testimony

- Observation of patient throughout entire contact
- Medical history
- History of the complaint
- Examination: head to toe external, genital
- Finding of injury / non-injury
- Psychological and physical harm and/or health risks associated with assault
- Follow-up recommendations
- Length of time SANE spent with patient

Exam Does Not Establish

- If the patient was sexually assaulted
- If the patient consented
- If non-specific genital injuries are from an assault or consensual sex

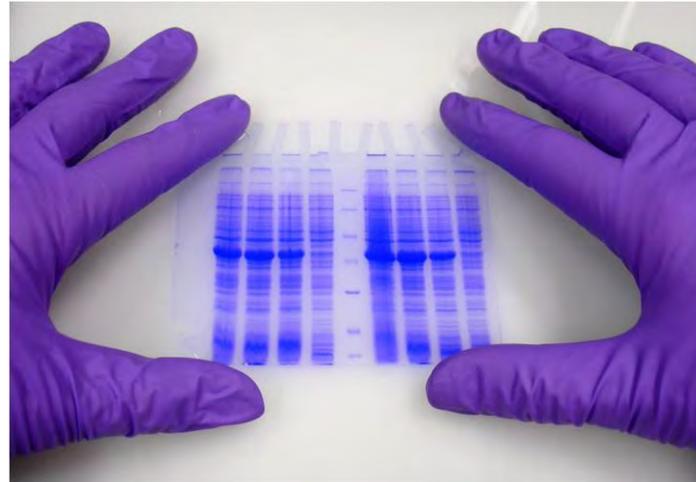
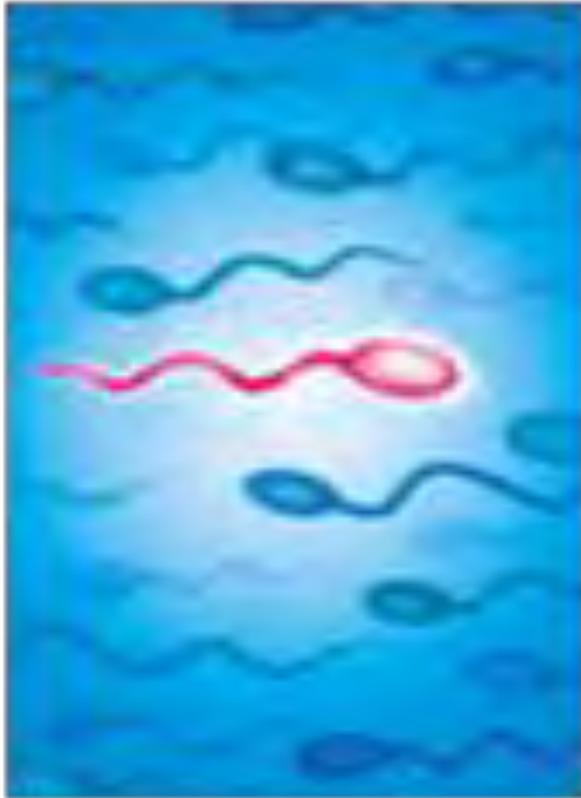
Expert Opinion

- Injury and non-injury in context of history and examination
- Causation of injury
- Findings consistent with history

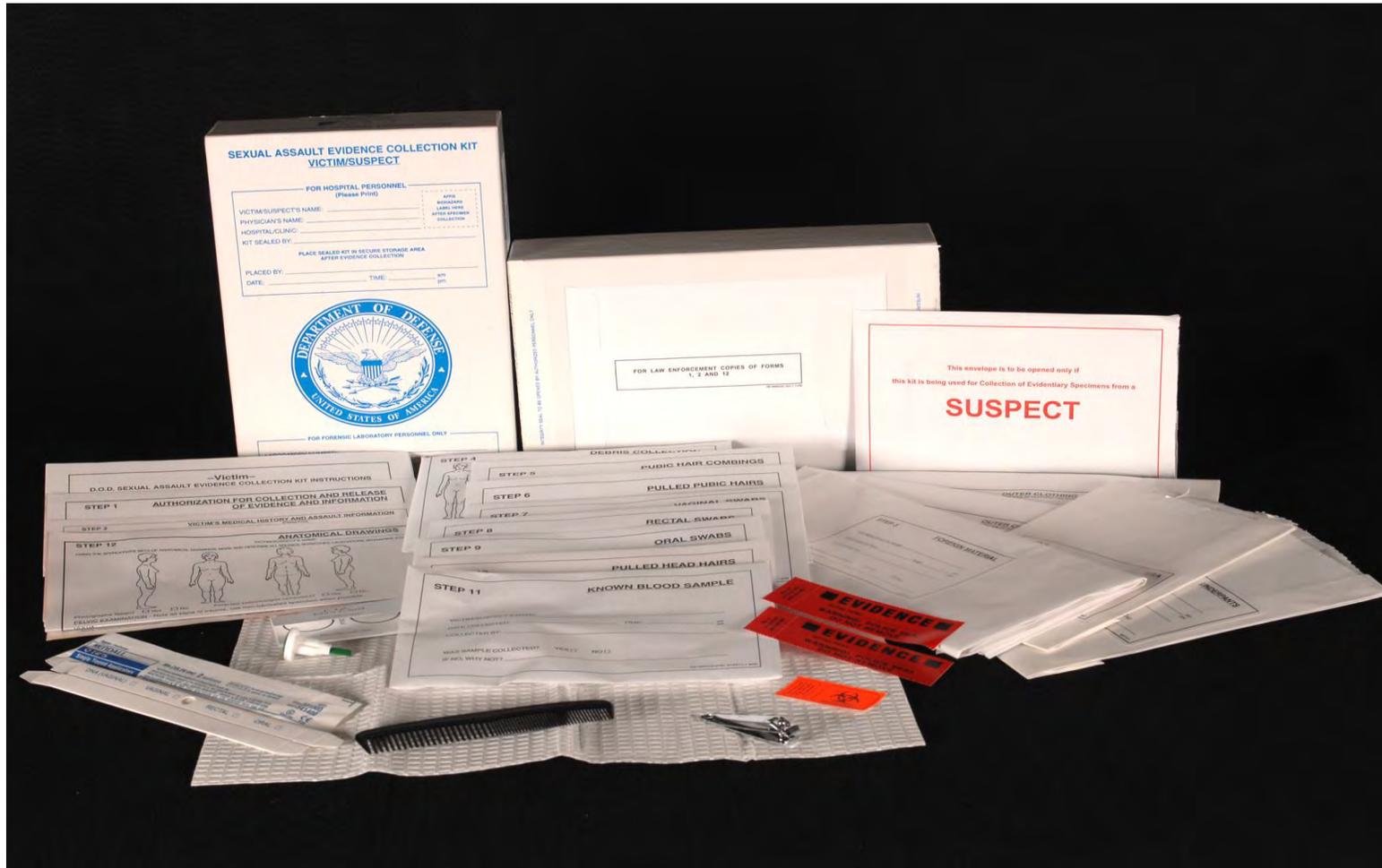
Importance of Language

- Patient-centered
- Forensic evidence is collected for the patient
- Chain of custody is part of the work, but not the goal
- Description of “forensic” role in professional standards is neutral

DNA Evidence



Evidence Collection



Ask SANE to Describe in Detail

- Process of obtaining swabs, emphasizing care that is taken
- Information/ explanation given to patient during exam
- That s/he asked patient for consent

Evidence is collected for the patient

Looking Back at Evidence Collection

- Packaging may have changed
- Protocol may have been different
- Signature of medical provider may have changed over time

Caveat: Review exhibit prior to trial

Preparation With SANE

- Request curriculum vitae and provide in discovery
- Meet before trial
- Discuss expert qualifications
- Discuss potential issues at trial

Pre-Trial Motions

- Medical history: prior consensual sexual contact, mental health treatment, pregnancy, if appropriate
- Expert qualification if necessary
- Discuss any issues with availability of original provider, chain of custody

Qualification of Expert

If qualified
outside
presence of jury

Repeat
questions in
presence of the
jury

Once
foundation
established

Prosecutor
proceeds
with direct



Qualification / Foundation

- Have CV available
- Previous expert testimony, if applicable
- Education, professional training, professional work experience, including supervisory work and training others

Direct Examination

Overview

- Testimony going back to an earlier time
- Establish integrity, professionalism, expertise, and care for patient
- Focus on attention to detail: observation of patient and demeanor
- Medical, social history
- History of the assault and patient's experience
- Examination relating back to history
- Findings and diagnosis

Direct Examination

Cont'd

- Going back to this *earlier date*, did you see your patient then?
- Where did you initially meet her?
- Do you have a recollection of her demeanor when you met her?
- After you met your patient, did you accompany her to another location in the hospital?
- Was anyone else present during your contact with her?

Direct Examination

Cont'd

- If advocate present, ask SANE to describe protocol for contacting advocate and role of advocate.
- Are you familiar with the term “history?”
- What is your understanding of “history?”
- Medical history, history of complaint
- Why is it important to obtain a history?

Direct Examination

Medical History

- Did you obtain a medical history?
- Why is this necessary?
- What information did your patient provide?
- Medical history should be inquired into as relevant to show vulnerability or as part of the SANE's assessment

Medical / Social History

- Date of exam / age of patient / height and weight, if appropriate
- Chronic medical problems: relevant to assessment or treatment of patient
- Current medications
- Pregnancy history, whether recent
- Drug allergies (important for incapacitation)
- Last consensual sexual encounter

History of Complaint

- Helps guide the medical-forensic exam
 - Foundation for admission of hearsay
- Foundation for this testimony should be provided in victim's direct exam
 - This also links patient and SANE
- Focus on demeanor and recording observations
- If record is silent, look to clinical observations

History of Complaint

Cont'd

- Areas of penetration / contact
- Types of penetration / contact
- Instrumentality of injury
- Identity of the offender
 - Crucial for discharge

State v. Stahl, 855 N.E.2d 834 (Ohio 2006)

History of Complaint

Cont'd

- Did you ask your patient what brought her to your care at the hospital?
- What information was she able to provide?
- If quotation marks used, ask SANE to explain focus on patient's own words
- Did she provide information to you about the assailant? Why is this information necessary for your purposes?

Physical Examination

- Head to toe exam: external body
- Evidence collection for the patient
- Genital exam
- Illustration of genital anatomy
- Description of head to toe exam and any physical findings

Physical Examination

Cont'd

- Penetration (legal and medical)
- Injury location; depth of penetration
- Show placement of injury on diagram
- Evidence should be offered with sensitivity to privacy of victim

Ask for explanation of medical terminology to ensure jury's understanding

Genital Inspection

- Careful inspection of the genital area, from the mons to the anus
- Labial traction, foley catheters and other techniques may increase ability to identify trauma

Injury and Documentation

- Injuries to body, with and without scale
- External genital photos; before and after special techniques
- Vaginal and cervical photos with colposcope or digital camera with magnification, if appropriate and consented to by patient
- Strongly consider victim privacy issues and maintain evidence securely
- Consider use of diagrams for trial purposes

Instrumentality of Injury

81% of women who reported digital penetration, but no penile penetration, had identified injury, predominantly to the posterior fourchette, cervix, and labia minora

L. Rossman, et al., *Genital Trauma Associated with Forced Digital Penetration*, 22(2) AM J EMERG MED. 101-04 (2004)

Injury Is Not the Holy Grail

- Presence of genital injury may mean that recent sexual contact has occurred, not that forcible sexual contact has occurred
- Presence of genital injury ranges from 5-87% depending on visualization techniques, age of patient, and prior sexual intercourse

Marilyn Sawyer Sommers, et al., *Injury Patterns in Women Resulting from Sexual Assault*, 2(3) TRAUMA, VIOLENCE AND ABUSE 240-58 (2001)

Sometimes No Injury is Found

- No injury does not mean no rape
- May mean no injury was noted on gross visualization, but no further tools were used to assess injury
- Injury was identified in 10-30% of cases where no colposcope was used vs. 72-87% with colposcope use

L. LEDRAY IN V. LYNCH, FORENSIC NURSING (2005)



Based Upon the History, Examination, and Findings

Were you able to reach an opinion or impression?

Was the patient's history consistent with your
findings?

Discharge Planning



Patients

- Individualize plans
- Dependent on health, crisis, safety needs



Healthcare Providers

- Need information about assault to complete exam
- Need information about assailant



Consequences of untreated sexual assault

- Chronic pain
- PTSD
- Reproductive issues
- Suicidal ideation
- Potentially homicidal

Follow-Up

- Medical follow-up
- Crisis follow-up information
- Plans for STI testing, if appropriate

NOTE: This differentiates healthcare professionals from forensic technicians, should the issue of objectivity be raised

Keys to Success

- Review medical record with fresh eyes
- Manage cold case issues
- Consult with SANE about symptoms of trauma
- Bring history of the event into its full urgency in the present

Going Forward

- Focus on victim's experience of sexual assault through testimony of medical expert
- Provide accurate and effective SANE expert testimony, whether provider or consulting expert
- Reveal the continuum of the disclosure from patient history to testimony at trial
- Recreate the reality of cold case sexual assault



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ON VIOLENCE AGAINST WOMEN

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